Supreme Court, U.S.
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No. 91-1826

In the Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

CATHOLIC SOCIAL SERVICES, INC., ET AL.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

v.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

PETER A. SCHEY
CARLOS R. HOLGUIN
Center for Human Rights And Constitutional Law
256 South Occidental Blvd.
Los Angeles, CA 90057
(213) 388-8693
Counsel of Record for Respondents

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel of Record for Petitioners

PETITION FOR WRIT OF CERTIORARI FILED: MAY 13, 1992
CERTIORARI GRANTED: JUNE 22, 1992

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Docket No. 86-1343

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS

v.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
11-12-86	1	Complt; sums issd; Mag's consent forms
		• • • • •
11-24-86	19	*ORD:* grnt provisional class certification
	20	*ORD:* Temporary Restraining Order; deft to show cause why preliminary injunction should not ne issued on 12/18 at 9:30 *MIN:* pltf mot/TRO grntd; crt to prep ord; briefs to be filed -OB 10 days; oppo 5 days; security bond $1; PI set 12/18/86 at 9:30
		• • • • •
4-6-87	48	Cert cpy of judgt fr CA-9 reversing and remanding to DC
		• • • • •

DATE	NR	PROCEEDINGS
5-3-88	162	ORD: Modification to the Class Certification Order – See Order for Details
	163	ORD: Pltfs' Motion for SJ is GRANTED – See Order for Details
		* * * * *
6-10-88	168	ORD: See Order for Details (lg ord)
6-20-88	169	NOTC OF APPEAL BY FED DEFENDANTS Notc by DC/Clk to 9CA/forms attached
		* * * * *
6-24-88	174	ORD: GRANTING Proposed order for Partial stay lodged 6-24-88
		* * * * *
7-7-88	178	Pltf's NOTC OF APPEAL OF DC COURT ORDER OF 6-10-88 -88-15046
7-8-88		CLK'S NOTC/FORMS RE: APPEAL TO THE 9CA – notc to all parties
7-11-88		Recv'd ltr dated 7-2-88, signed Peter A. Schey
		* * * * *
8-8-88	186	NOTC OF APPEAL BY FED DEFTS – form to 9CA and parties
8-11-88	187	ORD: Court's ord or 6-24-88 is VACATED; All portions of this crt's 6-10-88 ord are of full force and effect. Pltfs' mot for reconsideration or in the alternative for suppl relief is GRANTED. This Crt's ord of

DATE	NR	PROCEEDINGS
		6-10-88 is suppl by the Suppl Ord I have filed together with this opinion. See Order for Details; Deft's Mot for a stay pending appeal or pending disposition of a motion for a stay by the Ninth Circuit is DENIED.
	188	ORD: See Order for details; Pltfs' Mot for SJ on the legality of the 6-26-87 dutoff date is GRANTED. Crt has now resolved all the substantive issues tendered by the instant lawsuit, i.e., the validity of the cutoff dates and the regulation dealing with "brief, casual and innocent" absences.
8-11-88	189	ORD: that this crt's order of 6-10-88 is supplemented as follows: See Order for Details
		* * * * *
8-16-88	191	DEFT'S NOTC OF APPEAL – re: two orders entered 8-11-88 – notc to all parties
8-18-88		CLK'S NOTC TO ALL PARTIES AND 9CA
8-23-88		Recv'd confirmation ltr for Appl filed 8-16-88
8-25-88		Rec'd Copy of 8-19-88 Ltr to Atty Schey and Abascal from Robert Kendall, Jr. Office of Immigration Litigation re enclosing with his letter information that will be required by INS to properly implement the

DATE	NR	PROCEEDINGS
		Court's order if a stay is not granted by the Nith Circuit
		* * * * *
9-2-88	194	CERTIFICATE OF RECORD to 9CA (88-15046)
		* * * * *
5-6-92	197	COPY of Appellate Court Order: case remanded to USDC during pendency of stay of mandate to enforce stay until final disposition of case after filing of writ of certiorari for Supreme Court (kw) [Entry date 05/07/92]

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Docket No. 87-4657

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.,
PLAINTIFFS

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

RELEVANT DOCKET ENTRIES

DATE	NR		PROCEEDINGS
7-22-87	jcw	1	Complt. Issd Summs.
7-15-88	esl	63	MEMO OPINION & ORD pltfs' challenge to the modified policy adopted by the INS & codified at 8 C.F.R. §§ 254a.1(b) (9) & (b) (10) is w/o merit. Accordingly, S/J on this issue shall be ent in favor of defts. (ENT 7-18-88) Mld cpys & notc to all ptys.
8-12-88	esl	70	OPINION & ORD re relief, tht pltfs' request for injunctive relief is GRANTED. ORD tht S/J re the relief available to pltfs in subclass one shall be ent in favor of pltfs in subclass one, FUR ORD tht the INS is enjoined frm refusing to accept applics for an adjustment of status of those

DATE	NR	PROCEEDINGS
		aliens who fall w/in subclass one, beginning immediately & ending 11/30/88, or, if defts seek & are granted a stay of this Ord, & if this Crt's Ord is thereafter affirmed by the 9th Circuit, for a period of 120 days after such affirmance, & PROVIDED tht the alien contemporaneously provide a sworn affi attesting tht he or she falls w/in subclass one, & PROVIDED FUR tht if an alien is represented by cnsl, cnsl shall provide a sworn affid tht to the best of his or her knowledge after reasonable inquiry, the alien meets the requirements of subclass one, etc. FUR ORD tht this Crt shall cont to retain jurisdiction to assure tht this Ord is carried out fully & completely & to provide such other & fur relief or modifications as may be necessary. (ENT 8/15/88) Mld cpys & notcs to all ptys. MD JS-6.
9-3-88	vg	77 Deft's Fld NOTC OF APPEAL to 9th Cir. C/A frm ord ent 8-15-88. FEES WAIVED GOVNT APPEAL.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 88-15046

CATHOLIC SOCIAL SERVICES, INC.,
ET AL., PLAINTIFFS-APPELLANTS

v.

RICHARD THORNBURGH, ATTORNEY GENERAL
OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLEES

RELEVANT DOCKET ENTRIES

DATE	FILING-PROCEEDINGS
7-28-88	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. Fee payment due 8/11/88. Sent Ralph Santiago Abascal, Esq. (ot) [88-15046]
	* * * * *
8/22/88	Filed Appellant Catholic Social in 88-15046, Appellant Calif Coalition in 88-15046, Appellant Mercedes Aguilar De Lopez in 88-15046, Appellant Maria Teresa Reyes in 88-15046, Appellant Sara Orantes De Palacios in 88-15046, Appellee Edwin Meese in 88-15046's motion for interium temporary stay further action (CIVATT) [88-15046] served on 8/19/88 [1139982] (ck) [88-15046]

DATE	FILING-PROCEEDINGS
8-22-88	Filed joint mtn of aplts & aples for temporary, interim stay stay pending disposition of aplt's mtn for stay. (CIVATT) [88-15046] served on 8/19/88 [1140726] (db) [88-15046]
8-22-88	Filed aple/cross-aplt (Thornburgh) emergency mtn for stay of dc order pending appeal, and for expedited treatment of appeals (CIVATT) [88-15046, 88-15127] [88-15046, 88-15127]; served on 8/19/88 [1140766] (db) [88-15046 88-15127]
8-22-88	Filed order (BEEZER) The joint application for a temporary interim stayu pending disposition of the govt's motion for a stay pending appeal is granted. The dc's order of 6/10/88 is stayed pursuant to the terms and conditions of the dc's order of 6/24/88 through and including 9/1/88. [1140766-1] in 88-15046, 88-15127 [88-15046, 88-15127] (ck) [88-15046 88-15127]
8-30-88	Filed joint mtn of pltfs/aples/cross-aplts and deft/aplt/aple for continuance of interim stay pending disposition of aplt's mtn for stay. (requesting stay continue until 9/6/88) (CIVATT) [88-15046, 88-15127] served on 8/29/88 [1173006] (db) [88-15046 88-15127]
8-30-88	Filed order (BEEZER) The joint motion for a temporary interim staypending disposition of the govt's motion for a stay pending appeal is granted. The dc's order of 6/10/88, is stayed pursuant to the terms and conditions of the dc's order of 6/24/88, through and including 9/6/88. [1173006-1] in 88-15046, 88-15127 [88-15046, 88-15127] (ck) [88-15046 88-15127]

DATE	FILING-PROCEEDINGS
	• • • • •
9-21-88	Filed order (BROWNING, LEAVY) The order of 9/20/88 entered in 88-15127 is amended as follows: Appeal 88-15128 is consolidated with 88-15127. The COR filed in 88-15046 is deemed the certificate in 88-15127. The COR requirement is waived in 88-15128. Appeals 88-15127, 88-15128 and 88-15046 are released from the prebriefing conference program. The Clerk shall calendar these appeals for a November hearing in SF. The briefing schedule for these 3 appeals is as follows: Defendant shall file the opening brief, not to exceed 75 pages, on or before 9/30/88. Plaintiff shall file the answering/opening brief, not to exceed 75 pages on or before 10/12/88; Defendant shall file the reply/answering brief, not to exceed 50 pages on or before 10/19/88. Plaintiff shall file the reply brief, not to exceed 25 pages on or before 10/26/88. No motions for extensions of time or motions to exceed the page limits will be granted. The parties shall serve opposing counsel by overnight mail. setting cross appeal briefing schedule as follows: first cross-appeal brief is due 9/30/88 for Richard Thornburgh in 88-15046, for Richard Thornburgh in 88-15127, for Richard Thornburgh in 88-15128 second brief on cross-appeal is due 10/12/88 for Catholic Social in 88-15046, for Calif Coalition in 88-15046, for Mercedes Aguilar De Lopez in 88-15046, for Maria Teresa Reyes in 88-15046, for Sara Orantes De Palacios in for Catholic Social in

DATE	FILING-PROCEEDINGS
	88-15127, for Calif Coalition in 88-15127, for Mercedes Aguilar De Lopez in 88-15127, for Maria Teresa Reyes in 88-15127, for Sara Orantes De in 88-15127, for Catholic Social in 88-15128, for Calif Coalition in 88-15128, for Mercedes Aguilar De Lopez in 88-15128, for Maria Teresa Reyes in 88-15128, for Sara Orantes De Palacios in 88-15128 third brief on cross-appeal is due 10/19/88 for Richard Thornburgh in 88-15046, for Richard Thornburgh in 88-15127, for Richard Thornburgh in 88-15128 cross-appeal reply brief is due on 10/26/88 for Catholic Social in 88-15046, for Calif Coalition in 88-15046, for Mercedes Aguilar De Lopez in 88-15046, for Maria Teresa Ryes in 88-15046, for Sara Orantes De in 88-15046, for Richard Thornburgh in 88-15046, for Catholic Social in 88-15127, for Calif Coalition in 88-15127, for Mercedes Aguilar De Lopez in 88-15127, for Maria Teresa Ryes in 88-15127, for Sara Orantes De in 88-15127, for Catholic Social in 88-15128, for Calif Coalition in 88-15128, for Mercedes Aguilar De Lopez in 88-15128, for Maria Teresa Ryes in 88-15128, for Sara Orantes De Palacios in 88-15128 [88-15046, 88-15127, 88-15128] (ck) [88-15046 88-15127 88-15128]
	* * * * *
11/18/88	ARGUED AND SUBMITTED TO: Alfred T. GOODWIN in 88-15046, Joseph T. SNEED in 88-15046, Proctor R. HUG in 88-15046 [88-15046, 88-15127, 88-15128] (rk) [88-15046 88-15127 88-15128]

DATE	FILING-PROCEEDINGS
11-18-88	Received Aplts'/Cross Aples' Add'l. cites. (PANEL) [88-15046, 88-15127, 88-15128] (rk) [88-15046 88-15127 88-15128]
11-18-88	PRH, author [88-15046, 88-15127, 88-15128] [88-15046, 88-15127, 88-15128] (dm) [Entry date 11/21/88] [88-15046 88-15127 88-15128]
	* * * * *
12-28-88	Filed order (GOODWIN, SNEED, HUG): Plaintiff-appellees' motion to submit a supplemental memorandum is granted. The memorandum received 11/28/88 is ordered filed. [1485134-1] in 88-15046, 88-15127, 88-15128 [88-15046, 88-15127, 88-15128] (ck) [88-15046 88-15127 88-15128]
1-6-89	Filed order (GOODWIN, SNEED, HUG): Due to consolidation of the above-entitled cases and additional briefing ordered by the court, submission of this consolidated appeal shall be withdrawn pending further order of this court. [88-15046, 88-6447, 88-15127, 88-15128] (vt) [88-15046 88-15127 88-15128 88-6447]
	* * * * *
6-28-90	Filed order (GOODWIN, SNEED, HUG): Submission of these cases is withdrawn and deferred pending the decision of the United States Supreme Court in the case of Haitian Refugee Center, Inc. v. Nelson, upon which the petition for a writ of certiorari, No. 89-1332, has been granted. [88-15046, 88-6447, 88-15127, 88-15128] (sm) [88-15046 88-15127 88-15128 88-6447]
	* * * * *

DATE	FILING-PROCEEDINGS
2-5-92	Case resubmitted on this date to Alfred T. GOODWIN, Joseph T. SNEED, Proctor R. HUG. (See previous deferral of submission.) [88-15046, 88-6447, 88-15127, 88-15128] (wd) [Entry date 02/23/92] [88-15046 88-15127 88-15128 88-6447]
2-5-92	Proposed disposition circulated by PRH to ATG, JTS. [88-15046, 88-6447, 88-15127, 88-15128] [NOTE: this is NOT public information] (fb) [Entry date 03/19/92] [88-15046 88-15127 88-15128 88-6447]
2/10/92	Filed order (Alfred T. GOODWIN, Joseph T. SNEED, Proctor R. HUG): The case of Catholic Social Services, Inc. v. Thornburgh, Nos. 88-15046, 88-15127, and 88-15128, is hereby resubmitted as of Feb. 5, 1992. The case of League of United Latin American Citizens v. INS, No. 88-6447, is hereby submitted as of 2/5/92. [88-15046 88-15127 88-15128 88-6447]
2-13-92	FILED OPINION: (Terminated on the Merits after Oral Hearing (88-6447 Terminated on the Merits without Oral Hearing); Affirmed and Remanded; Written, Signed, Published. Alfred T. GOODWIN; Joseph T. SNEED; Proctor R. HUG, author.) FILED AND ENTERED JUDGMENT. [88-15046, 88-6447, 88-15127, 88-15128] (dl) [Entry date 02/21/92] [88-15046 88-15127 88-15128 88-6447]
	• • • • •
5-2-92	Filed order (GOODWIN, SNEED and HUG): Upon due consideration of the plaintiffs'

DATE	FILING-PROCEEDINGS
	motion for issuance of the mandate, and the defendants' response thereto, and the defendants' motion for a stay, and the plaintiffs' response thereto, IT IS ORDERED: 1. The mandate of this Court in these cases is stayed pending the timely filing of a petition for a writ of certiorari. If the petition is granted, the mandate shall remain stayed pending the Supreme Court's disposition of the case. 2. During the pendancy of this stay of mandate, the existing stay orders heretofore issued relating to the alien class shall remain in full force and effect. 3. These cases are remanded to the respective district courts for the limited purpose of enforcing the stay orders until final disposition of these cases. [2102359-1] in 88-15046, 88-6447, 88-15127, 88-15128, [88-15046, 88-6447, 88-15127, 88-15128] (tm) [88-15046 88-15127 88-15128 88-6447]
5-18-92	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 91-01826 filed on 05/13/92. [88-15046, 88-6447] (ot) [Entry date 05/29/92] [88-15046 88-6447]
	• • • • •

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CIVIL NO. CIV S-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), CALIFORNIA COALITION OF WELFARE RIGHTS ORGANIZATIONS, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, MERCEDES AGUILAR DE LOPEZ, MARIA TERESA REYES, SARA ORANTES DE PALACIOS, JOSE GUERRERO SARAVIA, EFREN GONZALEZ, LORENZA SANCHEZ BENUTO, CARLOS ALBERTO MEDINA, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, DEFENDANT.

[FILED NOV 24, 1986]

(PROPOSED) ORDER GRANTING PROVISIONAL CLASS CERTIFICATION

Plaintiffs having applied in conjunction with their Application for Temporary Restraining Order for an order granting class certification on a provisional basis; and

This Court having determined that it will issue a Temporary Restraining Order sought by the plaintiffs; and

It appearing that a provisional certification of the class is necessary in order to provide effective preliminary relief to maintain the status quo during litigation of this case; and

It further appearing that the requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure are met in this case:

IT IS ORDERED that,

1. This action is provisionally certified as a class action and shall be maintained as such until further order of the Court;

2. The Temporary Restraining Order entered by this Court shall bind the defendant, his agents and employees with respect to the entire class;

3. The class shall be comprised of these persons:

> All persons who have been or may be apprehended and have been or may be deported or issued voluntary departure by defendant (1) who are believed by defendant to be deportable aliens who can establish a prima facie claim for adjustment of status to temporary resident under § 245A(e)(1) of the INA, as amended, *or*; (2) who are believed by defendant to be deportable or excludable aliens who can establish a non-frivolous claim for adjustment of status to temporary resident under § 210(d)(i) of the INA, as amended.

4. The class representatives shall be: Catholic Social Services, Inc. (Centro de Guadalupe Immigration Center), California Coalition of Welfare Rights Organizations, National Center for Immigrants' Rights, Inc., United California Mexican-American Association, Mercedes Aguilar de Lopez, Maria Teresa Reyes, Sara Orantes de Palacios, Jose Guerrero Saravia, Efren Gonzalez, Lorenza Sanchez Benuto and Carlos Alberto Medina.

5. The Court shall retain the power to modify, amend, or revoke the class certification throughout the pendency of the action.

DATED: November 24, 1986

/s/ [SIGNATURE ILLEGIBLE]
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE # Civ S-86-1343-LKK

CATHOLIC SOCIAL SERVICES

v.

MEESE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on 11-25-86 I served a copy of the attached Orders (2) by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail at Sacramento, California; or by placing said copy into an inter-office delivery receptable located in the Clerk's Office.

SERVED BY INTER-OFFICE
Judge Karlton
Peter Nowinski
Glen Williams

SERVED BY MAIL
Ralph Santiago Abascal
California Rural Legal Assistance, Inc.
2111 Mission St., Ste. 401
San Francisco, CA 94110

Peter A. Schey
National Center for Immigrants Rights, Inc.
256 South Occidental Blvd.
Los Angeles, CA 90057

Elizabeth Sandoval
Catholic Social Services, Inc.
Immigration Center
730 S St.
Sacramento, CA 95814

/s/ S. FURSTENE
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CIVIL NO. CIV S-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), CALIFORNIA COALITION OF WELFARE RIGHTS ORGANIZATIONS, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, MERCEDES AGUILAR DE LOPEZ, MARIA TERESA REYES, SARA ORANTES DE PALACIOS, JOSE GUERRERO SARAVIA, EFREN GONZALEZ, LORENZA SANCHEZ BENUTO, CARLOS ALBERTO MEDINA, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, DEFENDANT.

[LODGED NOV 24, 1986]

(PROPOSED) TEMPORARY RESTRAINING ORDER

Plaintiffs having applied for a temporary restraining order, and based upon the supporting declarations and other exhibits, and the points and authorities in support of the application, and the Court being fully advised in the premises, GOOD CAUSE APPEARING THEREFORE,

IT IS ORDERED THAT defendant, and all persons acting by, through or under him, or subject to his control

or supervision, is restrained from removing or causing the removal of any alien from the United States unless and until he implements sections 245A and 210 of the INA, as amended by the IRCA, by:

1. Providing national instructions that persons who prima facie qualify for legalization under Sections 245A and/or 210 shall not be expelled from the country solely on the basis of a brief, innocent and casual unauthorized departure from the country and subsequent reentry without inspection on or after the date of enactment of the IRCA, November 6, 1987.

2. Advising all aliens, who prima facie qualify for legalization under Sections 245A and/or 210, and who have been issued orders to depart the country under deportation or voluntary departure, that such orders have been temporarily suspended in order to allow said aliens an opportunity to apply for the benefits of legalization.

3. Requiring that INS or Border Patrol agents at ports-of-entry advise departing aliens, who prima facie qualify for legalization under Sections 245A and/or 210, as they turn in their INS Form I-94 or other departure record, that such aliens appear to qualify for legalization and need not depart the country if they wish to apply for legalization.

4. Publication in the Federal Register of substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability, and rules of procedure that impact substantial rights, relating to Sections 245A and 210, and, in addition, shall, to the extent that any interim rules, except interpretive rules, general statements or policy, or rules of agency organization, procedure or practice, are promulgated, such rules shall include directions to all of his agents to advise any person, apprehended in the United

States, or who appear or are apprehended at the borders or ports of entry of the United States, in the belief that he or she is a deportable alien, that deportation must be stayed and work authorization granted if the person can make out a nonfrivolous case for adjustment of status pursuant to such sections, and the method to be utilized for asserting such rights, all in a manner clearly understandable to such person, by use of the advisal attached hereto as Exhibit A.

IT IS FURTHER ORDERED, that the defendant show cause before this Court in the United States District Courthouse, 650 Capitol Mall, Sacramento, California, on the __ day of December, 1986, at __ o'clock, __.M., or as soon thereafter as counsel can be heard, why a preliminary injunction should not be issued herein pursuant to Rule 765(a) of the Federal Rules of Civil Procedure, enjoining the defendant therein as aforementioned.

DATED: November __, 1986, at __.M.

UNITED STATES DISTRICT JUDGE

Presented by
/s/ Peter A. Schey
PETER A. SCHEY
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Glen Williams, Asst. U.S. Atty. has been served with copies of Proposed TRO, Declaration of Peter Schey & Declaration of Carlos Medina.

/s/ Peter A. Schey
PETER A. SCHEY
11-24-86

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NO. CIV S-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), CALIFORNIA COALITION OF WELFARE RIGHTS ORGANIZATIONS, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, MERCEDES AGUILAR DE LOPEZ, MARIA TERESA REYES, SARA ORANTES DE PALACIOS, JOSE GUERRERO SARAVIA, EFREN GONZALEZ, LORENZA SANCHEZ BENUTO, CARLOS ALBERTO MEDINA, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, DEFENDANT.

[LODGED NOV 24, 1986]

TEMPORARY RESTRAINING ORDER

Plaintiffs having applied for a temporary restraining order, and based upon the supporting declarations and other exhibits, and the points and authorities in support of the application, and the Court having been advised by oral arguments on the premises, GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED THAT defendant, and all persons acting by, through or under him, or subject to his control or supervision, is restrained as follows:

1. From removing or causing the removal of any alien from the United States who is otherwise prima facie eligible for legalization under § 245A or who presents a nonfrivolous claim for legalization under § 210 of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act ("IRCA"), on the basis of a brief, innocent and casual unauthorized departure from the country and subsequent re-entry without inspection on or after the date of the enactment of the IRCA, November 6, 1986. This order is stayed for five (5) days.

2. Accepting an INS Form I-94, or other departure record, from any alien who is prima facie eligible for legalization under §§ 245A or who presents a nonfrivolous claim for legalization under § 210 of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act. In the alternative, the agents may accept the departure forms without further inquiry or duty if at the place of depositing or collecting such forms found at the ports of entry and departure to Mexico, there is present a sign sufficiently large so that it may be read easily from a distance of five feet in English and Spanish which reads as follows:

> "IF YOU ARE DEPARTING FROM THE UNITED STATES UNDER A DEPORTATION ORDER OR VOLUNTARY DEPARTURE ORDER OF THE IMMIGRATION AND NATURALIZATION SERVICE, AND EITHER:
>
> (1) HAVE BEEN PHYSICALLY IN THE UNITED STATES SINCE JANUARY 1, 1982, EXCEPT FOR BRIEF, CASUAL AND INNOCENT DEPARTURES; OR
>
> (2) WORKED IN SEASONAL AGRICULTURAL SERVICES IN THE UNITED STATES FOR AT LEAST 90 MAN-DAYS DURING THE

> TWELVE MONTHS PERIOD ENDING ON MAY 1, 1986.
>
> YOU MAY NOT HAVE TO DEPART THE UNITED STATES.
>
> YOU MAY WISH TO REMAIN AND CONTACT THE IMMIGRATION AND NATURALIZATION SERVICE, AN IMMIGRATION LAWYER, OR AN ORGANIZATION WHICH HELPS PEOPLE WITH IMMIGRATION PROBLEMS."

This order is stayed for ten (10) days to permit implementation.

3. From removing or causing the removal of any alien from the United States who is otherwise prima facie eligible for legalization under § 245A or who presents a nonfrivolous claim for legalization under § 210 of the Immigration and Nationality Act, as amended by the IRCA, until he publishes in the Federal Register substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability, and rules of procedure that impact substantial rights, relating to §§ 245A and 210.

This order is stayed for ten (10) days to permit publication.

IT IS FURTHER ORDERED that the defendant shall show cause before the United States District Court, 650 Capitol Mall, Sacramento, California, on the 18 day of Dec., 1986, at 9:30 o'clock, why a preliminary injunction should not be issued herein enjoining the defendants therein as aforementioned.

IT IS SO ORDERED.

DATED: November 24, 1986.

/s/ Lawrence K. Karlton

LAWRENCE K. KARLTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

CASE # Civ S-86-1343-LKK

CATHOLIC SOCIAL SERVICES

v.

MEESE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on 11-25-86 I served a copy of the attached Orders (2) by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail at Sacramento, California; or by placing said copy into an inter-office delivery receptable located in the Clerk's Office.

SERVED BY INTER-OFFICE

Judge Karlton
Peter Nowinski
Glen Williams

SERVED BY MAIL

Ralph Santiago Abascal
California Rural Legal Assistance, Inc.
2111 Mission St., Ste. 401
San Francisco, CA 94110

Peter A. Schey
National Center for Immigrants Rights, Inc.
256 South Occidental Blvd.
Los Angeles, CA 90057

Elizabeth Sandoval
Catholic Social Services, Inc.
Immigration Center
730 S St.
Sacramento, CA 95814

/s/ S. FURSTENE
DEPUTY CLERK

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 86-2907
DC CV-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC.,
ET AL., PLAINTIFFS-APPELLEES

vs.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE
UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

[FILED APR 6, 1987]

JUDGMENT

APPEAL from the United States District Court for the Eastern District of California (Sacramento).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of California (Sacramento) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and remanded.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 86-2907
DC CV-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC.,
ET AL., PLAINTIFFS-APPELLEES

vs.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

[FILED APR 3, 1987]

Appeal from the United States District Court
for the Eastern District of California
The Honorable Lawrence K. Karlton,
Chief District Judge, Presiding
Argued and Submitted February 11, 1987
San Francisco, California
Filed: Apr 3, 1987

Counsel:

Mark B. Stern, Washington, D.C.
for the Defendant-Appellant

Peter A. Schey and Ralph S. Abascal,
Los Angeles, California
for the Plaintiffs-Appellees.

Before: ANDERSON, ALARCON, and HALL, Circuit Judges.

OPINION

J. BLAINE ANDERSON, Circuit Judge:

The heart of this matter concerns whether aliens apprehended for illegal reentry into the United States after November 6, 1986, who may otherwise be eligible for legalization under the Immigration Reform and Control Act of 1986, are deportable because they interrupted the requirement of continuous physical presence by leaving the United States without INS authorization.

I

This is a class action challenging the Attorney General's implementation, through the Immigration and Naturalization Service, of the Immigration Reform and Control Act of 1986 ("IRCA" or "Act"), Pub. L. No. 99-603. The President signed the Act into law on November 6, 1986, and it became effective on that date. The Immigration and Naturalization Service (INS) interpreted the Act to require illegal aliens who were in the United States after November 6, 1986 and who were prima facie eligible to apply for legalization under the Act, to obtain INS advance authorization before leaving the country. Accordingly, the INS apprehended a number of individuals, including some of the named plaintiffs, who had been in the country and were eligible for legalization under the Act except that they had departed and reentered the United States illegally after November 6, 1986. The INS sought to exclude these individuals from reentering the country, of if they had reentered, to deport them.

Plaintiffs filed this class suit on November 12, 1986, asking the district court to enjoin the INS from deporting aliens who could, but for their unauthorized departure and reentry, establish a prima facie claim for legalization

under the Act. the district court provisionally certified the suit as a class action and plaintiff Catholic Social Services ("CSS"), et al. as the class representatives.[1] On November 24, 1986, the district court issued a temporary restraining order restraining the INS from: (1) removing an alien from the United States who otherwise was prima facie eligible for legalization, (2) accepting a departure record from an alien with a claim to legalization who wished to leave the country or, in the alternative, accepting such records if the INS posted signs informing the aliens of their rights, and (3) deporting any alien with a claim to legalization until rules implementing the Act were published in the Federal Register.[2]

---

[1] The district court provisionally certified the suit as a class action under Fed. R. Civ. P. 23(b)(2) with members consisting of:

> "All persons who have been or may be apprehended and have been or may be deported or issued voluntary departure by defendant (1) who are believed by defendant to be deportable aliens who can establish a prima facie claim for adjustment of status to temporary resident under § 245A(e)(1) of the INA, as amended, *or*; (2) who are believed by defendant to be deportable or excludable aliens who can establish a nonfrivolous claim for adjustment of status to temporary resident under § 210(d)(i) of the INA, as amended."

[2] Specifically, the temporary restraining order stated as follows:

> IT IS ORDERED, that defendant, and all persons acting by, through, or under him, or subject to his control or supervision, is restrained as follows:
>
> 1. From removing or causing the removal of any alien from the United States who is otherwise prima facie eligible for legalization under § 245A or who presents a nonfrivolous claim for legalization under § 210 of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act ("IRCA"), on the basis of a brief, innocent and casual unauthorized departure from the country and subsequent re-entry without

inspection on or after the date of the enactment of the IRCA, November 6, 1986. This order is stayed for five (5) days.

2. Accepting an INS Form I-94, or other departure record, from any alien who is prima facie eligible for legalization under §§ [sic] 245A or who presents a nonfrivolous claim for legalization under § 210 of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act. In the alternative, the agents may accept the departure forms without further inquiry or duty if at the place of depositing or collecting such forms found at the ports of entry and departure to Mexico, there is present a sign sufficiently large so that it may be read easily from a distance of five feet in English and Spanish which reads as follows:

> "IF YOU ARE DEPARTING FROM THE UNITED STATES UNDER A DEPORTATION ORDER OR VOLUNTARY DEPARTURE ORDER OF THE IMMIGRATION AND NATURALIZATION SERVICE, AND EITHER:
>
> (1) HAVE BEEN PHYSICALLY IN THE UNITED STATES SINCE JANUARY 1, 1982, EXCEPT FOR BRIEF, CASUAL, AND INNOCENT DEPARTURES; OR
>
> (2) WORKED IN SEASONAL AGRICULTURAL SERVICES IN THE UNITED STATES FOR AT LEAST 90 MAN-DAYS DURING THE TWELVE MONTH PERIOD ENDING ON MAY 2, 1986, YOU MAY NOT HAVE TO DEPART THE UNITED STATES.
>
> YOU MAY WISH TO REMAIN AND CONTACT THE IMMIGRATION AND NATURALIZATION SERVICE, AN IMMIGRATION LAWYER, OR AN ORGANIZATION WHICH HELPS PEOPLE WITH IMMIGRATION PROBLEMS."

This order is stayed for ten (10) days to permit implementation.

3. From removing or causing the removal of any alien from the United States who is otherwise prima facie eligible for legalization under § 245A or who presents a nonfrivolous claim for legalization under § 210 of the Immigration and Nationality Act, as amended by the IRCA, until he publishes in the Federal Register substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability, and rules of procedure that impact substantial rights, relating to §§ 245A and 210.

The Attorney General appealed the district court's issuance of the temporary restraining order and sought an emergency stay pending appeal. A motions panel of this court construed the restraining order as a preliminary injunction, finding it appealable under 28 U.S.C. § 1292(a)(1). The motions panel then stayed enforcement of the district court's order pending resolution of this appeal, and set the case for an expedited appeal.[3] Subsequently, on January 15, 1987, the INS issued a "telegram" to give aliens notice of the advance parole authorization requirement if they intended to leave the United States.

II

1. Jurisdiction

The motions panel construed the temporary restraining order as a preliminary injunction appealable under 28 U.S.C. § 1292(a)(1). While we give deference to motions panel decisions made in the course of the same appeal, this court has an independent duty to decide whether we have jurisdiction. *See United States v. Houser*, 804 F.2d 565, 568 (9th Cir. 1986) (reviewing a motions panel decision as establishing the law of the case with respect to jurisdiction). Thus our initial inquiry is to determine whether we have jurisdiction over this appeal.

On November 24, 1986, the district court issued a temporary restraining order ("TRO"). Ordinarily, a TRO is not an appealable order over which we have jurisdiction. *St. Helen v. Wyman*, 222 F.2d 890 (9th Cir. 1955). The reason for nonappealability is that a temporary restraining

[3] The motions panel heard oral argument on the stay be telephone conference on December 3, 1986 and filed its decision on the same day.

order is not a final decision under 28 U.S.C. § 1291.[4] 7—Pt. 2 Moore's Federal Practice ¶ 65.05 (2d ed. 1986). *See also Kimball v. Commandant Twelfth Naval District*, 423 F.2d 88, 89 (9th Cir. 1970); *St. Helen*, 222 F.2d at 890.

However, jurisdiction will lie in this court where the TRO can be considered a preliminary injunction for purposes of 28 U.S.C. § 1292(a)(1).[5] *See Northern Stevedoring & Handling Corp. v. Int'l Longshoremen's & Warehousemen's Union Local No. 60*, 685 F.2d 344, 347 (9th Cir. 1982). The terminology used to characterize the district court's order "does not control whether an appeal is permissible under § 1292." *Northern Stevedoring*, 685 F.2d at 347. Instead, we look to the substance of the proceeding below.

We find the reasons for nonappealability of a TRO do not apply here. The order directed the Attorney General

[4] The statute, 28 U.S.C. § 1291, provides:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (3) and 1295 of this title.

[5] The statute, 28 U.S.C. § 1292(a)(1), provides:

> (a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:
>
> (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.

to take drastic action, i.e., not deport otherwise illegal aliens who entered the United States without inspection. Such action goes beyond merely preserving the status quo and impairs the Immigration and Naturalization Service's ability to control the borders and prevent illegal immigration. *Cf. Fernandez-Rogue v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982) (construction of a TRO as a preliminary injunction is determined by considering whether the order merely preserves the status quo or grants the relief requested); *Adams v. Vance*, 570 F.2d 950, 953 (D.C. Cir. 1978) ("When an order directs action so potent with consequences so irretrievable, we provide immediate appeal to protect the rights of the parties"). We find these circumstances justify treating the TRO as a *de facto* preliminary injunction appealable under § 1292(a)(1).

2. Standard of Review

A preliminary injunction is subject to limited review. The grant or denial of a preliminary injunction is within the discretion of the district court and must be affirmed unless that discretion was abused. *Zepeda v. I.N.S.*, 753 F.2d 719, 724 (9th Cir. 1983). Our inquiry is confined to considering the balance of hardships and the plaintiffs' likelihood of success on the merits. *National Center for Immigrants Rights v. I.N.S.*, 743 F.2d 1365, 1369 (1984) (citing *Benda v. Grand Lodge of the Int'l Ass'n of Machinists*, 584 F.2d 308, 315 (9th Cir. 1978), *cert. denied*, 441 U.S. 937 (1979)), *aff'd on other grounds*, 791 F.2d 1351 (9th Cir. 1986), *petition for cert. filed* (Jan. 20, 1987).

The Attorney General urges us to decide the merits of the case because interpretation of the Act is a question of law reviewable *de novo*. *See, e.g., Graham v. Teledyne-Continental Motors*, 805 F.2d 1386, 1388 (9th Cir. 1986).

We decline to do so. The posture of this case is the reviewal of a preliminary injunction. Neither party has had the opportunity to fully present their arguments to the district court. Also, the district court did not make a final decision on the merits. Moreover, we believe a complete factual determination needs to be made before a final decision on the merits can be made.[6] We therefore limit our review to determining whether the district court abused its discretion by concluding CSS was likely to succeed on the merits. *National Center*, 743 F.2d at 1369.

III

The IRCA changed immigration law as it historically existed in a very important respect. It gives, as a one-time only program, certain aliens the opportunity to become legalized United States citizens. The major purpose behind the Act was to increase control over illegal immigration by allowing a controlled legalization program for illegal aliens and thereby enable the INS to target its enforcement efforts on stemming the new flows of undocumented aliens into the country rather than seeking out those who had been in the United States for some length of time. *See* H.R. Rep. No. 99-682, 99th Cong., 2nd Sess. 1, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5649-5653.

There are two provisions under the IRCA whereby aliens may become legalized. The first is contained in Section 245A. (Section 201 of the Act). Under section 245A, persons who have been in the United States illegally since January 1, 1982, may apply for legalization by acquiring

[6] Factual determinations which may need to be made include findings on the administrative burdens placed upon the INS in administering parole authorization and the impact upon aliens affected by the Attorney General's interpretation, including seasonal agricultural workers entering the United States for the season of 1987.

temporary resident status, and then, after one year, by applying for permanent residency. The second legalization provision is contained in section 210 (section 302 of the Act), which permits application for legalization for seasonal agricultural workers who have been in the United States at least 90 man-days during the 12-month period ending May 1, 1986.

To apply for temporary residence under section 245A, an alien must establish that he "resided continuously" in the United States in an unlawful status since January 1, 1982, and has maintained "continuous physical presence" since the date of enactment. Sections 245A(a)(2)(A), (a)(3)(A) and (B). An alien must establish "continuous physical presence" except for "brief, casual, and innocent" absences. Section 245A(a)(3)(C). If an alien is outside the United States, he may not be admitted into this country to apply for adjustment of status under section 245A. Section 245A(a)(3)(C).[7]

[7] In setting out the presence requirement for adjustment of status to lawful temporary residence, the Act provides in § 245A(a)(3)(A), (B) and (C):

> "(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—
>
> (A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.
>
> "(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.
>
> "(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

Similarly, to apply for temporary residence as a seasonal agricultural worker under section 210, the alien must establish that he has "resided in" the United States and worked in agricultural service during the 12-month period ending on May 1, 1986. Section 210(a)(1)(B)(i) and (ii).

What is at issue here, then, is whether the district court erred in finding CSS likely to succeed on the merits of its contention that the Act (under § 245A or § 210) allows an alien with a prima facie claim to legalization to depart from and reenter the country after November 6, 1986 without INS authorization, i.e., illegally, without destroying the "continuous physical presence" requirement. While this contention resolves the first paragraph of the TRO, because the contention also is the basis for paragraphs two and three of the TRO, we believe it necessarily resolves them as well.

The essence of this case becomes whether an illegal reentry into the United States, i.e., one made without INS parole authorization, is "brief, casual, or innocent" under section 245A(a)(3)(B). The Attorney General argues that an illegal reentry breaks the "continuous physical presence" and "resided in" requirements of section 245A and section 210. In short, he suggests an illegal reentry is not "innocent." On this basis, he argues he must exclude or deport any alien who left the country without INS parole authorization since by leaving, they forfeited the possibility of applying for legalization.

IV

We find the Attorney General's argument persuasive. Essentially, the question is one of statutory interpretation. Our starting point is the truism that Congress has plenary power to make rules for admission of aliens. *Fiallo v. Bell,*

430 U.S. 787, 792 (1977); *Kleindienst v. Mandel,* 408 U.S. 753, 766 (1972); U.S. Const. art. I, § 8, cl. 4. Such power is necessary since the sovereignty of our nation depends upon control of our borders. In this, Congress has delegated implementation of the IRCA to the Attorney General, through the INS, and it is the Executive Branch's duty to enforce the Act Congress sought to pass. *See, e.g.,* Section 245A(b)(3)(A) (directing the Attorney General to authorize travel abroad during the period of lawful temporary residency).

Where the language of a congressional statute is unclear or ambiguous, we ordinarily look to congressional intent for direction in determining the correct interpretation. *Train v. Colorado Pub. Int. Research Group,* 426 U.S. 1, 9-10 (1976). The legislative history, however, is devoid of direction as to the meaning of "brief, casual, and innocent" as Congress intended it to be used in the IRCA.[8] We must therefore consider the Attorney General's interpretation of the statute, recognizing that his interpretation, while not binding, is "entitled to great deference and should be accepted unless demonstrably irrational or clearly contrary to the plain and sensible meaning of the statute." *Olivares v. I.N.S.,* 685 F.2d 1174, 1177 (9th Cir. 1982). Applying this standard, the legislative history, and

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[8] The House Report merely restates the language used in the Act.

> "In order to be eligible for legalization under this bill an individuals must show unlawful immigration status as of January 1, 1982, continuous residence in the United States since January 1, 1982, and compliance with most of the 33 grounds of exclusion in current law applicable to all persons seeking to come to the United States. The Committee requires the applicant to have been continuously physically present in the United States since the date of enactment except for brief, casual, and innocent absences."

H.R. Rep. No. 99-682, 99th Cong., 2nd Sess. 1, *reprinted in* U.S. Code Cong. & Admin. News 5649, at 5675-76.

the purpose behind the IRCA, we find the Attorney General's interpretation to be a reasonable construction of the statute. *Id.*

1. Consistency in Construction

First, we strive the view the language in one section of the Act consistently with other sections. *See Adams v. Howerton,* 673 F.2d 1036 (9th Cir.) *cert. denied,* 458 U.S. 1111 (1982). In doing this, we find the Attorney General has reasonably construed the Act. The purpose of the Act is to enable the INS to control the borders. *See supra,* U.S. Code Cong. & Admin News at 5649-55. For this reason, Congress did not allow aliens to present themselves at a port of entry and make a claim of or apply for legalization. *See* Section 245A(a)(3)(C). Aliens within the United States are required to apply with the Attorney General under section 245A for temporary residence. *See* Section 245A(a). Seasonal agricultural workers may apply for legalization under section 210 to the Attorney General if they are within the United States or to an appropriate consular office if they are outside the United States. *See* Section 210(b)(1)(A) and (B).

From this, it is reasonable to conclude that departure from the United States followed by unlawful reentry after enactment, could not be deemed "innocent" under section 245A(a)(3)(B). If, as the Attorney General suggests, the alien obtained authorization from the INS to leave the United States and reenter lawfully, the reentry could be considered "innocent." In short, it is reasonable to interpret the Act consistently. Congress would therefore not be expected to prohibit admission to apply for legalization while allowing unauthorized departure and illegal reentry to apply for legalization. *See* Section 245A(a)(3)(C).

2. Legislative Purpose

Second, we point out that the purpose of the IRCA is to control our borders and enable the INS to target its enforcement efforts. To do this, the INS is attempting to concentrate on stemming new flows of undocumented aliens attempting to cross the United States borders rather than ferreting out aliens in the interior who may have lived within the country for some time. *See, supra,* U.S. Code Cong. & Admin. News at 5653. The congressional purpose would be frustrated if an undocumented alien apprehended by the INS could avail himself of the potential for legalization under the IRCA by claiming that he had resided in the United States but merely departed after November 6, 1986, and was presently returning. This is particularly the case in light of the "policy" of the INS in administering the Act to allow minimal criteria for establishing prima facie eligibility for legalization, namely, a sworn affidavit by the alien that he or she meets the legalization criteria.[9]

3. Deference to the Agency

Finally, a reading of the IRCA shows that the Attorney General is directed to provide regulations in implementing section 245A with respect to residency periods, periods of absence and advance parole procedures as a result of a departure and reentry before November 6, 1986. *See* Sections 245A(g)(1), (g)(2) and (g)(3). From this, we believe

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[9] While the Attorney General represents that it is the policy of the INS to accept affidavits at face value, we point out that such a representation appears to be contrary to the mandate of the IRCA. *See, e.g.,* section 245A(g)(2)(D) (requiring documents and independent corroboration to establish continuous residence and physical presence).

the Act can reasonably be read as allowing the Attorney General to provide rules with respect to departure and reentry after November 6, 1986. *See* Section 245A(b)(3). Such a reading necessarily carries with it the proposition which the Attorney General argues here, i.e., that departure and illegal reentry (one without INS parole authorization) after November 6, 1986, is not an "innocent absence from the United States. Therefore, the opportunity to apply for legalization would be forfeited and the Attorney General could properly deport or exclude aliens entering the country without parole authorization.

V

For these reasons, we hold the district court erred in issuing the TRO. At the same time, we acknowledge that CSS has a number of arguments which are persuasive in its construction of the IRCA. Among others, these include: (1) prior judicial interpretations and their possible indirect incorporation into the Act in establishing the meaning of "innocent," (2) the fact that the Attorney General asked Congress to include explicit language within the IRCA on the meaning of "brief, casual and innocent," but Congress refused to do so, (3) the suggestion that "innocent" is determined by the purpose for the departure, not the nature of the reentry, and (4) the fact that aliens may not have notice of the parole authorization requirement and the Attorney General did not publish the INS authorization requirement and rules concerning parole authorization in the federal register.

However, while we acknowledge these arguments, we need not address them here. We only point them out to demonstrate that both the Attorney General and CSS can present reasonable arguments which support their respective interpretations of the IRCA.

In light of this, we find the district court erred in issuing the TRO. The Attorney General has presented us with a reasonable construction of the IRCA. The district court therefore abused its discretion by concluding CSS was likely to succeed on the merits.

REVERSED and REMANDED.[10]

The mandate shall issue forthwith.

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[10] The motion of CSS to supplement the record is denied. None of the material presented to us has been considered by the district court in connection with the issues raised on this appeal.

HALL, Circuit Judge, dissenting:

I do not believe that we have jurisdiction to review the temporary restraining order (TRO) entered by the district court in this case. Therefore, I respectfully dissent.

The majority treats the TRO as a "*de facto* preliminary injunction appealable under [28 U.S.C.] § 1292(a)(1)." *Ante* at 5. However, all of the Ninth Circuit cases cited in the opinion base appealability on the fact that the TRO in question effectively decided the merits of the case. Here, as the majority concedes, the TRO did not decide the merits of the case. *Id.* at 6.

In *Northern Stevedoring and Handling Corp. v. International Longshoremen's and Warehousemen's Union, Local No. 60,* 685 F.2d 344 (9th Cir. 1982), we considered whether a TRO enforcing an arbitration award was an appealable order under 28 U.S.C. § 1292(a)(1). We noted that "[w]hen a temporary restraining order *decides the merits of the case,* the appellate court will not require an appellant to go through additional proceedings for a permanent injunction." *Id.* at 347 (emphasis added). We went on to find the TRO appealable, relying on the fact that the TRO "*dispose[d] of the merits of the case.*" *Id.* (emphasis added).

Likewise, in *Graham v. Teledyne-Continental Motors,* 805 F.2d 1386, 1388 (9th Cir. 1986) (emphasis added), we held that the denial of a TRO was immediately appealable because it "*effectively decided the merits of the case*: should the NTSB and Teledyne proceed with the disassembly and inspection of the engines, appellant's claims will be rendered moot." *See also Kimball v. Commandant Twelfth Naval Dist.,* 423 F.2d 88, 90 (9th Cir. 1970) (TRO held appealable because trial judge "decided the merits of the case after hearing thorough argument by both sides").

Commentators are in agreement with our decisions. According to Wright and Miller: "The only situations in which an appeal is available from an order under Rule 65(b) is when the denial of the temporary restraining order actually decides the merits of the case or is equivalent to a dismissal of the claim, thereby rendering moot the underlying request for an injunction." 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2962, at 616-17 (1973) (footnotes omitted). Moreover, they note that "[t]he fact that injunctive relief is being sought is not sufficient in and of itself to bring a court order issued during the course of an action within the scope of the interlocutory appeals statute." *Id.* at 622.

The proposed opinion creates an exception to well-established rules of appealability by allowing the appeal of a TRO which does not dispose of the merits of the case. Such an unwarranted exception will only serve as an invitation to others to file premature appeals.

The majority attempts to justify its result by citing *Fernandez-Rogue v. Smith,* 671 F.2d 426 (11th Cir. 1982), and *Adams v. Vance,* 570 F.2d 950 (D.C. Cir. 1978), for the proposition that construction of a TRO as a preliminary injunction is determined by considering whether the order merely preserves the status quo or grants the relief requested. *Ante* at 5. These cases do not support the majority's conclusion that the TRO in this case is appealable. In *Fernandez-Rogue,* the court held that a TRO enjoining the Immigration and Naturalization Service (INS) from deporting aliens pending a determination of their legal rights was "intended merely to preserve the status quo in the face of the stated intention of the government to deport the appellees without notice to the court." 671 F.2d at 429. The court stated that such a TRO was "nonappealable." *Id.* at 430. Similarly, the TRO in this case merely preserves the status quo by enjoining the INS from deport-

ing aliens who are already present in this country pending a determination of their legal rights under the Immigration Reform and Control Act of 1986 (the Act). It is, therefore, nonappealable.

There are strong policy reasons for not allowing appeals from TRO's: .

> The practical reasons for not generally allowing appeals from temporary restraining orders are that (1) they are usually effective for only very brief periods of time, far less than the time required for an appeal . . . and are then generally supplanted by appealable temporary or permanent injunctions, (2) they are generally issued without notice to the adverse party and thus the trial judge has had opportunity to hear only one side of the case, and (3) the trial court should have ample opportunity to have a full presentation of the facts and law before entering an order that is appealable to the appellate courts.

Connell v. Dulien Steel Products, Inc., 240 F.2d 414, 418 (5th Cir. 1957), *cert. denied*, 356 U.S. 968 (1958); *see also* C. Wright & A. Miller, *supra* p. 2, at § 2962. All of these factors are present here. As the majority notes, "[n]either party has had the opportunity to fully present [its] arguments to the district court." *Ante* at 6. Furthermore, the district court had scheduled a preliminary injunction hearing for December 18, 1986, well within the twenty-day period allowed by Fed. R. Civ. P. 65(b).

The majority compounds its error by applying an improper standard of review. It cites *National Center for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365 (9th Cir.), *aff'd on other grounds*, 791 F.2d 1351 (9th Cir. 1986), *petition for cert. filed*, 55 U.S.L.W. 3536 (U.S. Jan. 20, 1987) (No. 86-1207), for the proposition that review is limited to determining whether the district court abused its

discretion in concluding that the plaintiffs were likely to succeed on the merits. *Ante* at 6. In fact, *National Center* stands for the proposition that review is limited to determining whether the district court abused its discretion in balancing the hardships against the plaintiffs' probability of success. 743 F.2d at 1369. The majority does not undertake a balancing of the hardships as required by *National Center*. The majority is unable to balance the hardships without more facts on the administrative burdens on the INS and the impact upon the aliens of the Attorney General's interpretation of the Act. The majority's inability to balance the hardships underscores the fact that the TRO in this case should not be treated as a "*de facto* preliminary injunction."

I would dismiss the appeal for lack of jurisdiction. The district court would then be free to consider whether a preliminary injunction is in order.

CERTIFICATE OF SERVICE

CASE # Civ S-86-1343-LKK

CATHOLIC SOCIAL SERVICES

v.

MEESE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on 4-7-87 I served a copy of the attached Orders (2) by placing said copy in a postage paid envelope addressed

to the persons hereinafter listed, by depositing said envelope in the U.S. Mail at Sacramento, California; or by placing said copy into an inter-office delivery receptable located in the Clerk's Office.

SERVED BY MAIL

Ralph Santiago Abascal
California Rural Legal Assistance, Inc.
2111 Mission St., Ste. 401
San Francisco, CA 94110

Linda Adams
Office of Immigration Litigation
Civil Division
Department of Justice
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

Lynn Pashahow
McCutchen, Doyle, Brown and Enersen
Three Embarcadero Center
San Francisco, CA

Ricardo Cordova
California Rural Legal Assistance
1100 Kansas Ave., Ste. C
P.O. Box 5316
Modesto, CA 95352

Peter Schey
National Center for Immigrants Rights, Inc.
256 South Occidental Blvd.
Los Angeles, CA 90057

Elizabeth Sandoval
Catholic Social Services
730 S St.
Sacramento, CA 95814

Michael Rubin
Altshuler & Berzon
177 Post St., Ste. 600
San Francisco, CA 94108

Robert Rubin
National Refugee Rights Project
301 Mission St., Ste. 400
San Francisco, CA 94105

/s/ S. FURSTENE
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NO. CIV. S-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

v.

EDWIN MEESE, III, ETC., DEFENDANT.

[FILED MAY 3, 1988]

ORDER

In a separate order, the court has determined that 8 C.F.R. section 245a.1(f) must be held inconsistent with section 245A(a)(3) of the Immigration and Naturalization Act as amended by the Immigration Reform and Control Act of 1986 ("IRCA"). In this order, I resolve plaintiffs' motion to amend the definition of the class certified in this suit.

The following class is presently certified in this action:

> All persons prima facie eligible for legalization under INA § 245A or having nonfrivolous claims to legalization under INA § 210 who:
>
> (1) reentered or attempted to reenter the United States without inspection after the enactment of IRCA following a brief, casual, and innocent absence from the United States . . . ; or

> (2) before the enactment of IRCA, were ordered by the defendant or his agents to depart the United States on dates falling after the enactment of IRCA and have received no notice from the INS rescinding or postponing their departure dates . . . ; or
>
> (3) possess nonfrivolous claims to legalization as Special Agricultural Workers and have been or may in the future be excluded from the United States prior to the filing of a legalization application . . . ; or
>
> (4) were apprehended by the INS prior to the enactment of IRCA and have been or may in the future be denied employment authorization . . . ; or
>
> (5) have attempted or may in the future attempt to surrender to the INS for processing, release, and the issuance of employment authorization, and whom INS has or may in the future refuse to issue such work authorization. . . .

See Catholic Social Services v. Meese, 664 F. Supp. 1378, 1380 n.2 (E.D. Cal. 1987); *see also* Plaintiffs' Memorandum of Points and Authorities in Support of Motion to Amend Complaint and Class Definition and to Add, Intervene or Join Parties, filed February 27, 1987, at 12.

Plaintiffs propose that the class definition be amended, as follows:

> (1) All persons deemed ineligible for legalization under section 254A solely on the ground that they reentered the United States without INS authorization (i.e. "advance parole") on or after November 6, 1986;

(2) All persons deemed ineligible to have their legalization applications approved in the United States under section 210 solely on the ground that they reentered or attempted to reenter the United States without INS authorization (i.e., "advance parole") on or after November 6, 1986;

(3) All persons who are eligible for legalization under either sections 245A or 210 who have been apprehended and/or detained by defendant and improperly advised of their rights under IRCA, or not advised of such rights, and thereafter expelled from the country.

The proposed definition is too vague, and sweeps too broadly. Furthermore, as to the third subclass, it is unclear whether there are any named plaintiffs to represent this class; nor is the scope of plaintiffs' claim in this regard clear to the court. Accordingly, the court will not recertify the class in accordance with plaintiffs' proposed definition. Instead, the court will certify the following class:

(1) All persons prima facie eligible for legalization under INA § 245A who departed and reentered the United States without INS authorization (i.e., "advance parole") after the enactment of IRCA following what they assert to have been a brief, casual and innocent absence from the United States; or

(2) All persons having a nonfrivolous claim to legalization under INA § 210 who reentered or attempted to reenter the United States without INS authorization (i.e., "advance parole") on or after November 6, 1986.

IT IS SO ORDERED.

DATED: May 3, 1988.

/s/ Lawrence K. Karlton

LAWRENCE K. KARLTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

CASE # Civ S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., PLAINTIFF(S),

v.

EDWIN MEESE, III, ET AL., DEFENDANT(S).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on May 3 1988, I served a copy of the attached Order (2) by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail at Sacramento, California; or by placing said copy into an inter-office delivery receptable located in the Clerk's Office.

SERVED BY INTER-OFFICE

LAWRENCE K. KARLTON. (2)
Chief Judge
U.S. District Court

SERVED BY MAIL

Ralph Santiago Abascal, Esq.
Stephen Rosenbaum, Esq.
Jose R. Padilla, Esq.

California Rural Legal Assistance, Inc
2111 Mission St., Suite 401
San Francisco, CA 94110

Ricardo Cordova, Esq.
California Rural Legal Assistance, Inc.
1100 Kansas Ave., Suite C
P.O. Box 5316
Modesto, CA 95352

Peter A. Schey, Esq.
National Center for Immigrants' Rights, Inc.
256 S. Occidental Blvd.
Los Angeles, CA 90057

Elizabeth Sandoval, Esq.
Catholic Social Services, Inc.
Centro Guadalupe Immigration Center
730 "S" Street
Sacramento, CA 95814

Michael Rubin, Esq.
Altshuler & Berzon
177 Post St., Suite 600
San Francisco, CA 94108

Robert Rubin, Esq.
Ignatius Bau, Esq.
National Refugee Rights Project
San Francisco Lawyers' Committee
for Urban Affairs
301 Mission St., Suite 400
San Francisco, CA 94105

Lynn H. Pasahow, Esq.
Beth A. Finley, Esq.
Patrick Broderick, Esq.
Edward Lopez, Esq.

McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, CA 94111

Glyndell Williams, Esq.
Special Assistant
U.S. Attorney
Immigration & Naturalization Service
650 Capitol Mall
Sacramento, CA 95814

Robert Kendall, Esq.
Office of Immigration Litigation
Department of Justice
601 "D" Street
Washington, D.C. 20536

James R. Grindstaff, clerk

By: Connie A. Ward
Connie A. Ward
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NO. CIV. S-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

v.

EDWIN MEESE, III, ETC., DEFENDANT.

[FILED MAY 3, 1988]

ORDER

This matter is before the court on plaintiffs' motion to amend the class definition and on cross-motions for summary judgment. Defendant has also filed a motion to dismiss plaintiffs' claims under section 210 of the Immigration and Naturalization Act ("INA"), as amended by the Immigration Reform and Control Act of 1986 ("IRCA"), on the grounds that those claims are moot. In this order, I resolve the motion for summary judgment relative to plaintiffs' claim concerning applicants for legalization under section 245A of the INA, as amended by IRCA (codified at 8 U.S.C. § 1255a, hereinafter referred to as "§ 245A"). The issues regarding claims under section 210, the Administrative Procedures Act, and class certification will be resolved in separate orders.

I turn to the merits of plaintiffs' claim.[1] Plaintiffs challenge the INS' interpretation of § 245A(a)(3)[2], as manifested by its regulations implementing that section. Specifically, plaintiffs challenge the INS' interpretation of the phrase "brief, casual and innocent."

On November 14, 1986, the INS issued a nationwide telex which provided, *inter alia,* that "[a]n alien who makes an unauthorized departure and illegal reentry after [November 6, 1986] shall be considered to have broken his period of continuous physical presence and thus will be ineligible for legalization under Section 245A." Plaintiffs' Exhibit A, at 15. In the final regulations, issued May 1,

[1] Defendant has objected to the court considering the motions for summary judgment as relating to the sixth amended complaint, which was filed after the summary judgment motion. Defendant argues that the sixth amended complaint introduces a new issue and new factual circumstances, i.e., aliens who entered the country "lawfully" but without advance parole, and that he will be prejudiced if he is not given an opportunity to conduct discovery and address the issue of "lawful" entries in this context. Defendant's contention is without merit. Plaintiffs have consistently, throughout the course of this litigation, challenged the INS' interpretation of the "brief, casual and innocent" absence exception to the continuous physical presence requirement of section 245A(a)(3). The addition of new plaintiffs who entered the United States by use of a border crossing card, but without advance parole, does not change the substantive legal issue presented by the summary judgment motion.

[2] That section provides: "(3) *Continuous Physical Presence Since November 6, 1986*—*(A) In General*—The alien must establish that the alien has been continuously physically present in the United States since November 6, 1986. (B) *Treatment of Brief, Casual and Innocent Absences*—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual and innocent absences from the United States. (C) *Admissions*—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

1987, the INS waived this condition for section 245A-eligible aliens who reentered the U.S. prior to May 1, 1987. 52 Fed. Reg. 16206, 16208 (1987). However, the final regulations define "brief, casual and innocent" as "a departure authorized by the Service (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control." *Id.* at 16208-09 (to be codified at 8 C.F.R. § 245a.1(g)). It is this interpretation of "brief, casual and innocent" as including only departures authorized pursuant to INS' advance parole procedures that is challenged here.

In order to determine whether the regulation conforms to the statute, the court must first determine the statute's meaning. Although in a previous opinion in this case, *Catholic Social Services, Inc. v. Meese*, 664 F. Supp. 1378, 1382-83 (E.D. Cal. 1987) (hereinafter "CSS"), I discussed at length relevant standards of statutory construction, it seems appropriate to delineate the appropriate method of proceeding here as well.

The task for a court confronted with a challenge to an administrative agency's construction of a statute is to ascertain congressional intent, for it is the duty of both the court and the agency to give effect to that intent. *INS v. Cordoza-Fonseca*, 480 U.S. ____, ____ n. 29i, 107 S. Ct. 1207, 1220 n. 29. "The first step of any district court in resolving a matter turning on statutory construction is to determine if there is binding authority construing the statute." *Tello v. McMahon*, 677 F. Supp. 1436, 1441 (E.D. Cal. 1988). In the absence of such authority, the court employs a sequential process, first applying the plain meaning rule to the statutory language and then, if necessary, looking to the legislative history. *CSS* at 1383. If the statutory language is "clear and unambiguous," *id.*, the court looks to the legislative history only to determine whether there is "clearly expressed legislative intention" contrary to the plain language of the statute. *Cardoza-Fonseca*, 480 U.S. at ____ n. 12, 107 S. Ct. at 1213 n. 12.[3]

If congressional intent can be ascertained using these "traditional tools of statutory construction," the question for the court is whether the agency's regulation is "fully consistent" with that intent. *National Labor Relations Board v. United Food and Commercial Workers Union, Local 23, AFL-CIO*, 484 U.S. ____, ____, 98 L. Ed. 2d 429, 441 (1987). On the other hand, if the initial analysis demonstrates that the statute is silent or contains an unresolved ambiguity as to the issue tendered, the court must resort to textual aids to construction and then to extrinsic aids, including examination of the agency's interpretation. *CSS*, at 1382-83. If there is such an ambiguity, the administrative interpretation, while not conclusive, is entitled to deference if the interpretation is a linguistically possible one and is consistent with the statutory purpose. *Young v. Community Nutrition Inst.*, 476 U.S. 974, 981-82 (1986). If the administrative interpretation is "based on permissible construction of the statute," *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984), it may be deferred to even if "the agency construction was [not] the only one it permissibly could have adopted . . . or even the reading the court would have reached if the question initially had

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[3] The plain meaning rule does not bar examination of the legislative history, *Watt v. Alaska*, 451 U.S. 259, 266 (1981), but "[v]ery strong evidence, if not explicit language, from the legislative history is necessary to overcome the plain meaning naturally to be drawn from the language of a statute." *Tello v. McMahon*, 677 F. Supp. at 1441.

arisen in a judicial proceeding." *Id.* at 843 n. 11. Factors to be considered in weighing the degree of deference to be afforded an agency interpretation include "the consistency with which an agency interpretation has been applied, and whether the interpretation was contemporaneous with the enactment of the statute being construed." *United Food and Commercial Workers Union*, 98 L. Ed. 2d at 442 n.20; *see also Sierra Club v. Watt*, 608 F. Supp. 305, 331 n.48 (E.D. Cal. 1985).

Applying the steps enumerated above, I determine below that the plain meaning rule does not resolve this case. Moreover, although the legislative history does provide significant evidence of legislative intent, it is not completely dispositive. Nonetheless, as I explain, the regulation in question will not be deferred to because the phrase "brief, casual and innocent" has not been consistently interpreted by the agency, and the regulation is inconsistent with the liberal construction of the statute contemplated by Congress, is inconsistent with the historic meaning of the phrase which was likely to have been the meaning Congress intended, and overall appears to frustrate rather than implement congressional intention.

I

PLAIN MEANING

Since there is no binding construction of the statute at bar, in accordance with the sequential process, I first examine the statute's language to determine if it is dispositive. It appears to the court that application of the plain meaning rule does not provide a clear resolution of the issue tendered. The phrase "brief, casual, and innocent" is not defined in the statute itself. *See Chevron U.S.A.*, 467 U.S. at 851; *Sacramento Regional County Sanitation Dist. v. Thomas*, 688 F. Supp. 1427, 1431 (E.D.

Cal. 1987). ("[W]hen Congress defines a term in a statute, that term is plain, and application of the plain meaning rule requires that term be given its statutorily defined meaning.") Nor does the phrase have a single clearly applicable "ordinary" or "normal" meaning which is readily discernible from the words themselves. *Cf. Garcia v. United States*, 469 U.S. 70, 73 (1984). Each of the words in the phrase has a variety of meanings and the statute itself does not provide a limiting construction of either the individual words or the entire phrase.

II

LEGISLATIVE HISTORY

Given the determination above, I next turn to the legislative history. Examination of that history strongly suggests that the phrase "brief, casual, and innocent" has a historic meaning and that Congress intended to adopt that meaning when employing the phrase in IRCA. To demonstrate that proposition, it is necessary to examine the legislative history dealing with the amendments relating to suspension of deportation, since it is in that context that the meaning of the term has developed.

In section 315 of IRCA, Congress amended section 244(b) of the INA, 8 U.S.C. § 1254(b), the section governing suspension of deportation, by adding the following provision:

> (3) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

The legislative history of this section specifically notes that:

> The Committee Amendment relaxes the recent Supreme Court interpretation with respect to the seven years "continuous physical" residence requirement to qualify for suspension of deportation under section 244 of the Immigration and Nationality Act (*Phinpathya v. INS*, 104 S. Ct. 584 (1984). That decision held that any departure from the U.S. during the seven year period was interruptive of the residence requirement, thus making the alien ineligible for relief. This Admendment relaxes the residence requirement in the case of a "brief, casual, and innocent" departure from the U.S.

H.R. Rep. No. 682(I), 99th Cong., 2d Sess., *reprinted in* 1986 U.S. Code Cong. & Admin. News 5649, 5682.

Congress used the same phrase in the amendment to the suspension of deportation statute as it did in section 245A.[4] "It is a well-established principle of statutory construction that 'the same words or phrases are presumed to have the same meaning when used in different parts of the statute.' " *United States v. Various Slot Machines on Guam*, 658 F.2d 697, 703 n.11 (9th Cir. 1981), *quoting Chugach Natives, Inc. v. Doyon, Ltd.*, 588 F.2d 723, 725 (9th Cir. 1978); *see also Metropolitan Life Insurance Company v. Taylor*, 481 U.S. __, __, 95 L. Ed. 2d 55, 64

[4] The fact that Congress used *additional* language in the suspension of deportation context ("and did not meaningfully interrupt the continuous physical presence") is not significant for the examination undertaken here. As the legal meaning of the phrase "brief, casual and innocent" developed, it came to be used as an exposition of the circumstances under which a meaningful interruption of physical presence did not occur; *see* section IV, *infra;* thus, it is the parallel use of "brief, casual and innocent" that is instructive.

("presumption that similar language in two labor law statutes has a similar meaning . . . fully confirmed by the legislative history"). The presumption is rebutted only by a showing that "the same phrases are used in '*different* parts of the statute with manifestly different intent.' " *U.S. v. Various Slot Machines on Guam*, 658 F.2d at 703 n.11. Here, there is no evidence that Congress intended the phrase "brief, casual and innocent" to have different meanings in different sections of IRCA; indeed, the evidence is to the contrary.

That the Congress was well aware of the historic meaning of the phrase "brief, casual and innocent" it employed in both sections is reinforced elsewhere in the history. Thus in comments on use of the phrase in section 245A, John R. Bolton, Assistant Attorney General, in a letter dated June 4, 1986, to the Chairman of the House Judiciary Committee, wrote:

> The Administration also believes that the provisions relating to "brief, casual and innocent absences from the United States will be extremely difficult to administer. Application of this standard is not supported by *Rosenberg v. Fleuti*, 374 U.S. 449 (1963). *Fleuti* applied only to lawful permanent resident aliens, not aliens illegally in the United States. We suggest that absences of a specific period of time, i.e., no more than fifteen days in the aggregate, from the date chosen for legalization, constitute the qualifying limit. The bill should also specifically state that absences related to violations of the immigration laws would automatically interrupt the physical presence requirement, regardless of the period of absence.

H.R. Rep. No. 682(I), at 116, 1986 U.S. Code Cong. & Ad. News at 5720. The comments in his letter with respect to section 244(b) are substantially similar:

> This amendment would overrule *INS v. Phinpathya,* 104 S. Ct. 584 (1984), which held that any absence, however, [sic] brief, breaks the continuity of physical presence.
>
> We oppose this amendment because its vagueness invites judicial lawmaking and encourages litigation. We recommend either deleting this provision or amending it to preclude the establishment of continuous physical presence if the alien's departure is 15 days or longer or where the alien has engaged in activities contrary to the immigration laws.

Id. at 124, 1986 U.S. Code Cong. & Ad. News at 5728.[5]

The legislative history above, while it does suggest that Congress was aware that the phrase "brief, casual and innocent" had a historic meaning, does not itself resolve the meaning of the phrase. Nonetheless, that historical context significantly aids in construing the statute because " '[w]here words are employed in a statute which had at the time a well-known meaning at common law or in the law of this country they are presumed to have been used in that sense unless the context compels to the contrary.' " *Lorillard v. Pons,* 434 U.S. 575, 583 (1978), *quoting Standard Oil v. United States,* 221 U.S. 1, 59 (1911).

It is unclear to the court whether under the sequential method of statutory construction, the historic meaning of a term when specifically recognized in the legislative history, should be treated as legislative history or merely as an extrinsic aid to construction. Because legislative history may suffice to foreclose further analysis, the court believes that discretion is the better part of valor, and it is more appropriate to treat it as an extrinsic aid, thus insuring further analysis. By treating the historic meaning of the phrase as an extrinsic aid to construction, I thus conclude that neither application of the plain meaning rule nor examination of the legislative history is dispositive of the issue at bar. Accordingly, application of other aids to construction are required. Given my determination to treat the historic meaning of the phrase as an extrinsic aid, I will defer further exposition of that meaning to that portion of the opinion (see § IV, *infra*).

[5] The references to *Fleuti* and *Phinpathya* in the Assistant Attorney General's letter to the Committee demonstrates that the entire course of development of the phrase "brief, casual and innocent" was before the legislature since, as is described in section IV, *infra,* the doctrine was first enumerated in *Fleuti* and rejected in the suspension of deportation context in *Phinpathya.*

Before applying various extrinsic aids to resolution of the statute's meaning, however, I must now recognize that the legislative history provides very specific guidance for interpretation of the legalization program implemented by Congress in IRCA. The House Report specifically declares that:

> The Committee intends that the legalization program should be implemented in a liberal and generous fashion, as has been the historical pattern with other forms of administrative relief granted by Congress. Such implementation is necessary to insure the true resolution of the problem and to insure that the program will be a one-time-only program.

H.R. Rep. No. 682(I) at 72, 1986 U.S. Code Cong. & Ad. News at 5676.[6]

[6] The need to interpret liberally in order to insure a one-time-only program grew out of the Committee's recognition that "any equitable proposal for immigration reform must address the large population of undocumented aliens living and working in the United States, many for a long period of time. Therefore, the bill requires the Attorney General to grant legal status to those aliens who have been in the United States a substantial number of years, have developed equities

Thus, any construction of the statute requires a generous and liberal interpretation. With this admonition in mind, I now turn to determining whether this case may be resolved by deferring to the agency's interpretation as embodied in its regulations.

III

AGENCY INTERPRETATION

The final regulation defines "brief, casual and innocent" as "a departure authorized by the Service (advance parole) *subsequent to May 1, 1987* of not more than thirty (30) days for legitimate emergency or humanitarian purposes . . ." (emphasis added). 52 Fed. Reg. 16208-09 (to be codified at 8 C.F.R. § 245a.1(g)). Rather than providing a generous and liberal reading, the regulation construes the statute's reach in a very narrow manner. In that sense, it can be said that the administrative interpretation does not stand on a "permissible" basis within the meaning of *Chevron, U.S.A.*. Even if the agency's interpretation stood on firmer ground, however, I do not believe deference is appropriate under the circumstances.

First it must be noted that the regulation simply finds no support in the text of the statute. Thus, there is no basis in the statute for differentiating between "brief, casual and innocent absences" which took place prior to May 1, 1987, and those which occurred after that date. The statute provides that 245A-eligible aliens must establish that they have been continuously physically present in the United States, except for "brief, casual and innocent" absences, since November 6, 1986, the date of enactment. Sections

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here, and have abided by the laws of this country." *Id.* at 71, 1986 U.S. Code Cong. & Ad. News at 5675.

245A(a)(3)(A) & (B). Put another way, eligible aliens may have "brief, casual and innocent" absences between November 6, 1986, and the date they file their applications. While May 1, 1987 is the date the application period started, *see* § 245A(a)(1)(A), there is no statutory basis for distinguishing between "brief, casual and innocent" absences that occurred during the preapplication period (between November 6, 1986 and May 1, 1987) and those that occurred after the application period started.

Any possible reading of the Attorney General's final regulation leads to a result that is inconsistent with the Congressional purpose. If the regulation is interpreted as permitting all otherwise eligible aliens inside the United States as of May 1, 1987, to obtain legalization without consideration of absences from the United States between November 6, 1987 and May 1, 1987, the Attorney General has in effect voided the continuous physical presence requirement during the preapplication period. If, on the other hand, the regulation is interpreted literally, i.e., that an alien must establish that he has been continuously physically present in the U.S. since November 6, 1986, except for absences authorized by the INS after May 1, 1987, then it reads the "brief, casual and innocent" absence exception out of the statute entirely during the preapplication period. Neither construction of the regulation is consistent with the plain language of the statute. Under these circumstances, it is not clear that the regulation is a linguistically permissible interpretation of the statute so that deference is even possible.

The conclusion that Congress did not intend the exception to encompass only absences authorized by INS is reinforced by consideration of other provisions of the statute. Central to understanding this aspect of the congressional scheme is accepting the full implication of the fact that

this statute is a "legalization" program, i.e., that it provides rights to people who are presently in an illegal status. Given this understanding, the statute reflects congressional recognition that the legalization program might fail because of the illegal alien's natural fear of the Immigration Service. Under such circumstances, interpreting the phrase "brief, casual and innocent" to require advance parole is simply inconsistent with that congressional perception.

The section 245A legalization program extends to aliens who have resided continuously in the United States in an unlawful status since January 1, 1982. The statute provides that applications for legalization may be filed either with the Attorney General or with qualified designated entities ("QDEs"). *See* § 245A(c). The House Report explains the decision to use QDEs as part of the legalization program, as follows:

> The Committee has learned that legalization programs in other countries have usually produced a low rate of participation among the eligible candidates. At least part of the reason is distrust of authority and lack of understanding among the undocumented population. The Committee hopes that by working through the voluntary agencies, the Attorney General might be able to encourage participation among undocumented aliens who fear coming forward. To assist in this endeavor, the bill authorizes the Attorney General to fund outreach serve and provides for an extensive education and outreach program prior to the application period.

H.R. Rep. No. 682(I) at 73, 1986 U.S. Code Cong. & Ad. News at 5677. The statute also has strict confidentiality provisions which prohibit the Attorney General from gaining access to QDE files and records regarding an alien's

request for assistance with the legalization process without such alien's consent. Section 245A(c)(4). These provisions are "meant to assure applicants that the legalization process is serious and not a ruse to invite undocumented aliens to come forward only to be snared by the INS." H.R. Rep. No. 682(I) at 73, 1986 U.S. Code Cong. & Ad. News at 5677. This express recognition of and concern about the problem of getting undocumented aliens to come forward to participate in the program makes it highly unlikely that Congress intended to require such aliens to seek INS permission to leave the country prior to the time their legalization applications were filed.

Other aspects of IRCA also suggest that the regulation is faulty. The statute makes frequent and express references to authorization for certain activities and to advance parole throughout section 245A.[7] These provisions demonstrate that Congress knew about the process and could have written similar language into section 245A(a)(3) if it had intended to impose such a condition on the "brief, casual and innocent" absence exception to the physical residence requirement. *See, e.g., Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 614 (1944).

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[7] The Attorney General is required to authorize certain trips abroad for successful applicants during their period of temporary residency. *See* § 245A(b)(3)(A). By contrast, there is no reference to "authorization" for travel during the application period. The statute also expressly directs the Attorney General to exclude absences under a grant of advance parole from the aggregate period of time that breaks the period of continuous residence required to establish eligibility. *See* § 245A(g)(1)(A) & 2(B)(ii). Further, the Attorney General is directed to provide employment authorization to eligible aliens during both the preapplication and the application period, §§ 245A(e)(1)(B) & (2)(B), as well as during the period of temporary residence, § 245(A)(b)(3)(B).

Finally, deference is inappropriate because the Attorney General has not interpreted the phrase in a consistent manner. As noted above (*see* § II), the Assistant Attorney General, in his letter to the House Committee, fully recognized that the term "brief, casual and innocent" had a historic meaning and was being used by the Congress consistent with that meaning. As I explain in section IV, *infra*, that meaning certainly was not restricted to INS authorized departures. Thus, the Attorney General's regulation is not only inconsistent with the department's previous understanding of the language, it in effect sought to limit the meaning of the phrase, a result which Congress had rejected.

Moreover, the INS has not interpreted the phrase consistently throughout the statutory scheme. As noted above, the Congress also used the "brief, casual and innocent" language in its amendment to the suspension of deportation statute. IRCA § 315(b). In response to requests for admissions served by the plaintiffs in this litigation, the INS has admitted that "it is the policy of the INS that 'brief, casual and innocent' absences, including absences followed by reentry without inspection, do not automatically make aliens ineligible for suspension of deportation under 8 U.S.C. § 1244, as amended by IRCA section 315(b)." Plaintiffs' Exhibit PPPP; Defendant's Responses to Plaintiffs' Request for Admission, Response #6. By contrast, only absences authorized by INS are "brief, casual and innocent" for purposes of section 245A. 8 C.F.R. § 245a.1(g). As noted in section II, *supra*, there is no basis in the statute for construing the identical language in the two sections differently.

The defense argues that the determination that the INS may not deny a legalization application solely on the basis of an unauthorized absence from the country that is otherwise "brief, casual and innocent" contravenes section

245A(a) (3) (C). The court cannot agree. That section provides "[n]othing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection." The full implications of that section need not be resolved here and I do not do so. It may be that the practical effect of that section is to require denial of legalization to otherwise eligible aliens who are caught returning from a brief trip outside the United States[8], while at the same time preserving the right to legalization for those who successfully evade the INS on their return. If that is indeed the practical effect of the provision, it must be read in the context of a program to extend legalization to aliens who have been in this country unlawfully for over five years, and who Congress believed would have particular distrust of and fear of the INS because of the nature of such an existence. Whatever else this section may imply, it does not justify a regulation which, as a practical matter, itself virtually nullifies the "brief, casual and innocent" absence exception to the continuous physical presence requirement. For all the above reasons, the court simply cannot give any deference to the agency's interpretation.

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[8] Judge Lynch, of the Northern District of California, found that new regulations which require denial of parole for those aliens who apply for parole "for the sole purpose of seeking" legalization under IRCA, Amendment 15, 52 Fed. Reg. 16,194 (1987) (to be codified at 8 C.F.R. § 212.5(b)), were inapplicable to an alien whose "long-standing residence and family ties here almost certainly were his primary motivations" for requesting parole. *Gutierrez v. Ilchert*, __ F. Supp. __, slip op. at 11-12 (N.D. Cal. 1988), Plaintiffs' Exhibit QQQQ. Similarly, an alternative interpretation of section 245A(a)(3)(C) might limit the application of that section to aliens who seek admission for the express purpose of applying for legalization, as opposed to those whose purpose in returning is to rejoin their families or to return to established jobs.

IV
THE HISTORIC MEANING OF THE PHRASE

Given the court's inability to defer to the agency's view, I turn to another extrinsic aid to statutory construction, which does provide substantially more guidance in construing the phrase. As noted above, the phrase "brief, casual, and innocent" had a meaning which developed in immigration case law over a 21-year period, beginning with the Supreme Court's decision in *Rosenberg v. Fleuti*, 374 U.S. 449 (1963). In *Fleuti*, the Supreme Court held that a permanent resident alien who had made an afternoon trip to Mexico had not made an "entry" within the meaning of § 101(a) (13) of the INA, 8 U.S.C. § 1101(a) (13) and therefore was not excludable.[9] The Court held that such a trip, if it was "innocent, casual, and brief" was not an "intended" departure within the meaning of the statute. *Id.* at 461. The Court relied in part upon the "general purpose of Congress in enacting § 101(a) (13) to ameliorate the severe effects of the strict "entry" doctrine." *Fleuti* at 461-62. It concluded that the exception to 8 101(a) (13) was construed "as meaning an intent to depart in a manner which can be regarded as meaningfully interruptive of the alien's permanent residence." *Id.* at 462. Factors relevant in finding such an interruption included the length of the absence, the purpose of the visit, and whether an object of the visit was to "accomplish

[9] That section provided, in relevant part, that "an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him." 8 U.S.C. § 1101(a)(13), *quoted in Fleuti*, at 452.

some object . . . contrary to some policy reflected in our immigration laws." *Id.*

The "brief, casual and innocent" absence doctrine was extended to cases involving suspension of deportation, provided for in 8 U.S.C. § 1254, in *Wadman v. INS*, 329 F.2d 812 (9th Cir. 1964). In *Wadman*, the Ninth Circuit was required to decide if a five-day absence from the United States on a vacation in Mexico was interruptive of the seven-year period of continuous physical presence in the United States necessary to obtain a suspension of deportation. The circuit found that there was no significant distinction between the concept of "entry" central to *Fleuti* and the "continuous physical presence" requirement they faced. *Id.* at 815-16. The court held that "continuous" was "no more subject to a hard and fast construction than is the term 'intended.' The question is whether the interruption, viewed in balance with its consequences, can be said to have been a significant one under the guides laid down in *Fleuti*." *Id.* at 816. The court also concluded that the question was one of fact, not of law. *Id.*

For our purposes, it is not unimportant to note that the court in *Wadman* held that strict construction of section 244 was "peculiarly inappropriate" because the apparent purpose of the section was to enable the Attorney General to "ameliorate hardship and injustice which otherwise would result from a strict and technical application of the law." *Id.* at 816-177. The court decided that a strict construction would frustrate this purpose, while a "liberal construction . . . would simply tend to increase the scope of the Attorney General's review and thus his power to act in amelioration of hardship." *Id.* at 817. The similarity between the congressional purpose in section 244 as described in *Wadman* and that underlying section 245A of IRCA is quite apparent.

While the "brief, casual and innocent" doctrine as it developed was not parsed as three separate tests, *see Fleuti*, 374 U.S. at 462, the "innocent" factor most logically would appear to refer to the purpose of the absence from the United States. If that purpose was to accomplish some object which was itself contrary to a policy reflected in the immigration laws, the absence would be regarded as "meaningful." Illegal entry or reentry into the United States, however, was not, without more, the type of unlawful conduct that would neecessarily render an absence not innocent and therefore "meaningful." *See Git Foo Wong v. Immigration and Naturalization Service*, 358 F.2d 151, 153-54 (9th Cir. 1966); *see also de Gallardo v. Immigration and Naturalization Service*, 624 F.2d 85, 87 (9th Cir. 1980)[10]; *but see Heitland v. Immigration and Naturalization Service*, 551 F.2d 495, 503 (2d Cir.), *cert. denied*, 434 U.S. 819 (1977) (using "implicitly deceptive methods to secure re-entry in the United States" was a "course of conduct directly contrary to a 'policy reflected in our immigration laws.' (citation omitted).")

Development of the "brief, casual and innocent" doctrine was halted by the Supreme Court's decision in *INS v. Phinpathya*, 464 U.S. 183 (1984). In *Phinpathya*, the Supreme Court held that the continous physical presence requirement was to be applied literally, thus overruling the long line of appellate cases which had applied the *Fleuti*

[10] The logic of the proposition appears clear to this court. Given that the question arose in a suspension of deportation context, all departures and re-entries were likely to *vel non* violate the immigration laws. Thus if the innocence aspect of the test referred solely to the propriety of departure or re-entry, it would always be resolved against the alien; however, as noted, the test was intended to relieve the alien of application of the immigration law strictissimi juris.

doctrine in the suspension of deportation context.[11] As noted above, Congress explicitly overruled *Phinpathya* when it amended the suspension of deportation statute in IRCA. The legislative history noted in section II, *supra*, plainly demonstrates that Congress intended to revive the "brief, casual and innocent" doctrine as it had developed in the case law.

My conclusion that Congress intended the phrase to be read against its historical context leads to resolution of the meaning of the term as used in section 245A. First, the question of whether an absence was brief, casual and innocent was one of fact to be resolved in a hearing, on a case-by-case basis, and thus was not subject to categorical definition by regulation. Such a result, moreover, seems consistent with recent Supreme Court evaluation of terms such as those in issue. As the high Court has recently explained, when there is some ambiguity in the terms which make up a standard, the terms "can only be given concrete meaning through a process of case-by-case adjudication." *Cardoza-Fonseca*, 480 U.S. __, 94 L. Ed. 2d 434, 458. In sum then, while the court cannot give definitive meaning to the statutory phrase outside its application to specific facts, it is possible for this court to find as a matter of law that the "brief, casual and innocent" doctrine is not prop-

[11] In *Phinpathya*, the Court observed that *Fleuti* involved a lawful alien, while the case before it involved an unlawful alien "who could have been deported even had she remained in this country." *Id.* at 194. The Court observed that "[s]uch an alien has no basis for expecting the Government to permit her to remain in the United States or to readmit her upon her return from foreign soil." *Id.* This distinction is plainly inapplicable to an interpretation of section 245A of IRCA, which by its terms applies only to aliens who have been in an unlawful status from January 1, 1982 through the date of their application in order to qualify for legalization. Section 245A(a)(2)(A).

erly limited to absences authorized by the INS.[12]

Given the requirement that the statute be construed liberally and generously, given the historic meaning of the phrase "brief, casual and innocent," given the statutory recognition of the natural reluctance illegals would feel in contacting the INS, and for all of these reasons explained above, plaintiffs' motion for summary judgement is GRANTED. The final regulation defining a "brief, casual and innocent" absence as one authorized by the INS is invalid as inconsistent with the statutory scheme and hence is unenforceable.[13]

IT IS SO ORDERED.

DATED: May 3, 1988.

/s/ Lawrence K. Karlton

LAWRENCE K. KARLTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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[12] To be sure, the pre-*Phinpathya* case law concerning the "brief, casual and innocent" doctrine reflects uncertainty among the circuits as to whether the exception should be applied in the suspension of deportation context at all. *See INS v. Phinpathya*, 464 U.S. 183, 194 n.12. As noted above, there are also disagreements about how the *Fleuti* factors should be applied. Nonetheless, neither set of disagreements prevents this court from concluding as a matter of law that "brief, casual and innocent" absences are not limited to those authorized by INS. The first disagreement has been resolved by the language of IRCA itself, which reflects congressional intent to apply the doctrine in this context. The second set of disagreements are to be resolved in the case-by-case adjudication of each application, recognizing the congressional directive that the statute be given a liberal and generous application.

[13] I have previously ordered the parties to brief the issue of whether additional relief is appropriate and available. The court will consider that matter in a subsequent order.

CERTIFICATE OF SERVICE

Case No. Civ S-86-1343 LKK

CATHOLIC SOCIAL SERVICES, INC., PLAINTIFF(S),

vs.

EDWIN MEESE, III, ET AL., DEFENDANT(S).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on May 3, 1988, I served a copy of the attached Order (2) by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail at Sacramento, California; or by placing said copy into an inter-office delivery receptable located in the Clerk's Office.

SERVED BY INTER-OFFICE

LAWRENCE K. KARLTON, (2)
Chief Judge
U.S. District Court

SERVED BY MAIL

Ralph Santiago Abascal, Esq.
Stephen Rosenbaum, Esq.
Jose R. Padilla, Esq.
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
2111 Mission St., Suite 401
San Francisco, CA 94110

Ricardo Cordova, Esq.
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1100 Kansas Ave., Suite C
P.O. Box 5316
Modesto, CA 95352

Peter A. Schey, Esq.
NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
256 S. Occidental Blvd.
Los Angeles, CA 90057

Elizabeth Sandoval, Esq.
CATHOLIC SOCIAL SERVICES, INC.
CENTRO GUADALUPE IMMIGRATION CENTER
730 "S" Street
Sacramento, CA 95814

Michael Rubin, Esq.
ALTSHULER & BERZON
177 Post St., Suite 600
San Francisco, CA 94108

Robert Rubin, Esq.
Ignatius Bau, Esq.
NATIONAL REFUGEE RIGHTS PROJECT
SAN FRANCISCO LAWYERS' COMMITTEE
FOR URBAN AFFAIRS
301 Mission St., Suite 400
San Francisco, CA 94105

Lynn H. Pasahow, Esq.
Beth A. Finley, Esq.
Patrick Broderick, Esq.
Edward Lopez, Esq.
McCUTCHEN, DOYLE, BROWN & ENERSEN
Three Embarcadero Center
San Francisco, CA 94111

Glyndell Williams, Esq.
Special Assistant
U.S. Attorney
Immigration & Naturalization Service
650 Capitol Mall
Sacramento, CA 95814

Robert Kendall, Esq.
Office of Immigration Litigation
Department of Justice
601 "D" Street
Washington, D.C. 20536

JAMES R. GRINDSTAFF, CLERK

By: Connie A. Ward
CONNIE A. WARD
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

Deposition of JANE EILEEN ARELLANO, taken on behalf of Plaintiff, at the National Center for Immigrants Rights, Inc., 256 South Occidental Boulevard, Los Angeles, California, on Friday, January 16, 1987, commencing on 10:00 A.M.

APPEARANCES:

FOR THE PLAINTIFF:
PETER A. SCHEY, ESQ.
National Center for Immigrants' Rights, Inc.
256 South Occidental Boulevard
Los Angeles, California 90057

FOR THE DEFENDANT:
ROBERT KENDALL, JR., ESQ.
U.S. Department of Justice
Civil Division
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

ALSO PRESENT:
SUSAN L. KAMLET, ESQ.
LINDA ADAMS, ESQ.
ESMERALDA CABRERA, ESQ.
ELIZABETH HACKER, ESQ.

[10] to grant someone advance parole?

A. December the 19th.

Q. And do you have a copy of those guidelines with you here today?

A. Personally, no, I don't.

MS. KAMLET: Can we go off the record?

(Off the record.)

BY MR. SCHEY:

Q. Can you recall what the factors are that agents are being advised to consider in deciding whether or not to grant advance parole, other than the fact that the person must establish prima facie eligibility for legalization.

A. We asked for a determination to be made whether there is urgent need to travel outside the United States.

Q. But what factors are the agents advised to consider in deciding whether the need to travel is an emergency?

A. We have been advising our Immigration officers to apply the same criteria to the legalization eligibility requests as we do on all other requests for advance parole, those being showing an urgent or emergent need to see an ill relative, being an immediate relative, or a death in the family, or other emergent personal reasons

* * * * *

[38] exist in that case that you have testified to earlier or could you testify from the summary in Exhibit 2?

MS. KAMLET: I would object to the question to the extent that it requires speculation on the part of the witness regarding the precise reasons for denial or grants of each of these applications.

To the extent that she must speculate whether she will be able to know the reasons for granting or denial from this exhibit, I object to the question.

BY MR. SCHEY:

Q. For example, the fifth entry on the first page of Exhibit 2 indicates that the application for advance parole was denied. It indicates that the subject's wife was receiving a hernia operation. And it further indicates that no evidence that spouse is in critical condition.

Could you explain, is it the current policy that before somebody will be given advance parole based on the illness of a spouse that their medical condition must be critical?

A. No.

Q. Are you able to tell us why this person, Manuel Gutierrez, was denied advance parole?

MS. KAMLET: I object to the question on the grounds that the reasons for denial that she has available

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS,

VS.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

Deposition of THOMAS E. GAINES, taken on behalf of Plaintiff, at the National Center for Immigrants Rights, Inc., 256 South Occidental Boulevard, Los Angeles, California, on Friday, January 16, 1987, commencing on 10:00 A.M.

APPEARANCES:

FOR THE PLAINTIFF:

PETER A. SCHEY, ESQ.
National Center for Immigrants' Rights, Inc.
256 South Occidental Boulevard
Los Angeles, California 90057

FOR THE DEFENDANT:

ROBERT KENDALL, JR., ESQ.
U.S. Department of Justice
Civil Division
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

ALSO PRESENT:

SUSAN L. KAMLET, ESQ.
LINDA ADAMS, ESQ.
ESMERALDA CABRERA, ESQ.
ELIZABETH HACKER, ESQ.

[18] by the INS District Office to compile the names of aliens in that situation and contact them and advise them that under IRCA if they are prima facie eligible for legalization they no longer need to leave the country?

A. I am not aware of any of those procedures.

Q. Are you aware that the present policy of INS nationwide is to only grant work authorization to aliens who are prima facie eligible for legalization and who are apprehended subsequent to November the 6th, 1986?

THE WITNESS: Can you read that back to me? I am getting lost.

(Question read.)

MS. CABRERA: If you know.

THE WITNESS: I don't know that.

BY MR. SCHEY:

Q. You don't know what the present policy is?

A. I know what the general policy is.

Q. But I am not asking you for a general policy, I am asking you specifically whether or not you know that the current policy in practice is to only grant work authorization to aliens who are prima facie eligible for legalization and who were apprehended after the enactment of IRCA? Are you aware of that policy?

MS. CABRERA: I am going to object to that question. I think it is misleading the deponent at this time.

[19] I think it would be more appropriate if you asked him what the policy is in the District Office at this time with respect to employment authorization.

MR. SCHEY: You are still required to answer.

THE WITNESS: The problem I am having, I don't understand how you are phrasing the question.

MR. SCHEY: Let me rephrase it.

Q. Are you aware that in the Los Angeles District Office today work authorization is not being provided to aliens who are prima facie eligible for legalization but who

had an order to show cause issued against them prior to November 6th, 1986?

MS. CABRERA: If you know.

THE WITNESS: I don't know.

BY MR. SCHEY:

Q. Are you aware that at various public meetings and press conferences INS officials in the Los Angeles District Office have urged aliens who believe that they are prima facie eligible for legalization not to contact the agency or come into the agency until on or after May of 1987?

A. Yes, I am aware of that.

Q. And how has that information been disseminated to the public, to the population of aliens who might be eligible for legalization?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Case No. S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

Monday, January 12, 1987

Deposition Of:

RICHARD E. NORTON

called for examination by counsel for plaintiffs, pursuant to notice, commencing at 9:20 a.m., Library Conference Room (8121), Office of Immigration Litigation, 601 D Street, Northwest, Washington, D.C., when were present on behalf of the respective parties:

APPEARANCES:

For Plaintiffs:

PETER A. SCHEY, ESQ.
National Center for Immigrants' Rights, Inc.
256 South Occidental Boulevard
Los Angeles, California 90057
(213) 388-8693

For Defendant:

ROBERT L. BOMBAUGH, ESQ.
Director, Office of Immigration Litigation
Civil Division
U.S. Department of Justice
601 D Street, NW
Washington, D.C. 20536

ALSO PRESENT:

ROBERT KENDALL, JR., ESQ.
ESMERALDA CABRERA, ESQ.

[79] advance parole program began to work for persons eligible for legalization?

A. Before answering that question, I would like to see telex number 8 again, please.

Q. Certainly. Why don't you take a look at it.

MR. SCHEY: Why don't we go off the record for two minutes.

(Off the record.)

MR. SCHEY: Okay, we are back on the record.

BY MR. SCHEY:

Q. My pending question is, has any instruction been issued to the field requiring them to report to the central office on their implementation of telex number 8?

MR. BOMBAUGH: That is a new question. That wasn't the one—

MR. SCHEY: Well, if you would deal with the new question, I would appreciate that.

THE WITNESS: Not to report, that I recall. We asked them to maintain a list and be sure that they were aware of the fact that they can apply for advance parole if they had to leave the country. But nothing [80] requiring a report.

BY MR. SCHEY:

Q. Approximately how many INS agents and Border Patrol agents are involved in the field nationwide in enforcement who would need to know the information contained in telex number 8 regarding the possible eligibility of certain otherwise deportable aliens for advance parole?

A. Our instruction was addressed to all field officers. We felt there was nobody who should go ignorant of these revisions in the teletype. We asked all officers to be aware of it.

Q. Do you know how many officers one is talking about?

A. Oh, that number certain floats around, depending on who is on duty. It is all the officers of the Border Patrol, all of the office or corps people in the district offices. It certainly adds up to what, in excess of 6,000 people, I guess, or approaches that.

Q. Do you know, given present INS management systems, approximately how long it would take for those officers to become aware of the contents of a telex like [81] telex number 8 issued on December 17, 1986? Just approximately, are we talking about a couple of days or a week, two weeks?

A. Oh, for the vast—and I underscore that word—majority of the officers to know, it would simply be a matter of virtually overnight. The telecommunications system has it out in the field within hours of its referral to our communications branch, and the immediate dissemination of that document is routine in the field. Certainly it depends on what time of the day it gets in, who is on duty and who is not, whether or not you are on annual leave. But certainly overnight the majority of officers should be aware of these contents, given the constraints of distribution to people who are on shift work and spread far afield from one end of the border to the next.

Q. Have you received any reports or can you today testify as to whether or how many persons have applied for advance parole who are prima facie eligible for legalization between November 6th and today?

A. No. To my knowledge, no inquiry has been made to polling the field offices as to how many people

* * * * *

[97] A. Yes.

Q. The next sentence indicates that an alien found concealed in a vehicle would normally be considered a border apprehension, regardless that his actual entry was not witnessed.

Are you aware of any current service policy which would mandate how far from a border an alien found concealed in a vehicle may be treated as having been apprehended at the border?

A. In my mind it is clear as to what circumstances we are describing here. How someone else may interpret it in light of other statutory language or other policy requirements, I don't know.

Q. What is your understanding, if any, of current INS policy regarding how far from a border a person found concealed in a vehicle may be treated as having been apprehended at entry? Or do you believe that this cannot be defined in terms of distance from the border?

A. The concept of being apprehended at entry is highly specific to this particular act to try to keep control of the circumstances that we are faced with on [98] the border between date of enactment and date of application.

Q. Are you aware of what the current policy is, if there is such a policy, regarding how far from the border an alien found concealed in a vehicle may be treated as having been apprehended at entry?

A. I am not sure I understand your question.

Q. Let me repeat the question.

Are you aware of what the current INS policy is in implementing IRCA regarding how far from a border an alien found concealed in a vehicle may be treated as an apprehension at the time of entry? Are you aware of any current policy on that question?

A. The only policy that I know of it as stated in the paragraph that we are discussing, item number 4, paragraph 2, which specifically states that—it is highly dependent on circumstances and the judgment of the officer on a probable cause basis as to whether or not the alien is in the process of effecting an entry. That is the only policy of which I am aware.

Q. And as I understand it, that policy, when you use the words "an officer involved in apprehending [99] somebody at entry", since those aliens are clearly dealt with in the first sentence of the second paragraph of number 4, and here, according to the memo itself, we are dealing with "other cases", I assume you understand the policy to allow certain aliens found concealed in a vehicle other than at the border to be treated as apprehensions taking place at the time of entry, is that correct?

MR. BOMBAUGH: I am going to object to the form of the question on the grounds that it is argumentative. If you understand it, you can answer it.

MR. SCHEY: Let me rephrase the question. I don't want to ask any argumentative questions.

BY MR. SCHEY:

Q. I am still trying to understand, since the first sentence of this paragraph deals with a very clear group of people, namely aliens apprehended in the act of effecting an illegal entry – the following sentences fairly clearly deal with other cases, and one of those other cases are aliens found concealed in a vehicle.

My question is, are you aware of any current [100] INS policy which would define how far from the border an alien found concealed in a vehicle may be treated as having been apprehended at entry?

MR. BOMBAUGH: I think the question has been asked and answered. But you can answer it again.

THE WITNESS: Yes, I have answered that question to the best of my knowledge and ability, that we are dealing with a circumstance that is unique – that is, the interim period between enactment and the application. And because there are away of acquiring a benefit or preventing losing the benefit by departing without acquiring permission to do so, that policy had to be provided which allowed us to contend with the exigencies that would crop

up at the borders during this six months period, and that this guidance – and this is the only area in which this policy is dealt with, to my knowledge – was provided to the field officers to that they are aware of the circumstances which would allow them to treat an alien as having been in the process of effecting an illegal entry and therefore would be ineligible for the benefits, or at least to apply for the benefits while in the States.

[101] BY MR. SCHEY:

Q. And would it be fair to state that aliens who are treated as having been apprehended at entry are not eligible to apply in the United States for legalization?

A. Again, are you asking if there are aliens who are caught in the process of effecting an entry, as defined by this policy, are then not allowed to apply for –

Q. Would it be fair to state – the policy clearly addresses two groups of aliens, as I have repeatedly pointed out. The first sentence deals with aliens apprehended in the act of effecting entry. And subsequent sentences, by their own terms, deal with who may be considered to have been apprehended at entry.

A. Right.

Q. Would it be fair to state that aliens apprehended, who are considered to have been apprehended at the time of entry, are not deemed eligible to seek legalization in the United States?

A. Yes.

[102] Q. Would it also be fair to state that they are not deemed eligible for a stay of deportation?

A. Yes, if they are in the process of effecting an entry. Or you have stated legalization, I assume you mean section 245A, potential beneficiaries. They cannot have entered subsequent to 11/6/86 and be considered eligible for the benefit.

Q. What is the current policy of INS with regards to the meaning of the term "just crossed the border," if you know?

A. I know of no further interpretation that has been applied to that statement.

Q. Are you aware of any instructions which have been issued to the field regarding releasing from detention deportable aliens currently detained by the Immigration Service or for the Immigration Service by another agency or private organization, who appear or who are prima facie eligible for legalization?

A. Released from INS custody?

Q. That is correct. Are you aware of any—

A. You weren't clear. It seemed as though you were saying people who were held by other agencies—I

U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. Civ. S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS,

v.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

Washington, D.C.
Tuesday, October 13, 1987

Deposition of:

RICHARD E. NORTON

a witness, called on behalf of the Plaintiff in the above-entitled action, before Anne C. Early, a notary public in and for the District of Columbia, whose commission expires October 14, 1992, taken in the offices of the U.S. Department of Justice, Civil Division, Office of Immigration Litigation, 601 D Street, N.W., 8th Floor Conference Room, Washington, D.C. 20001, beginning at 10:35 a.m.

APPEARANCES:

On behalf of the Plaintiffs:

STEPHEN ROSENBAUM, ESQ.
California Rural Legal Assistance
2111 Mission Street, Suite 401
San Francisco, California 94110

On behalf of the Defendant:

ROBERT KENDALL, JR., ESQ.
Assistant Director, Office of Immigration Litigation
U.S. Department of Justice, Civil Division
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044

[17] A. That is correct.

Q. Is there anyone else you can think of who would have been involved in this policy change or the date?

A. The reason I can't say with any certainty is that the members present on the executive staff on any one particular date certainly vary with other commitments. Exactly who was present during the discussions on this issue I only vaguely recall. It was five or six months ago.

Q. This is an issue that was—

A. This was a time when many, many policies were being deliberated with a final version being reached for publication on May 1st.

Q. So, this was an issue that was, in fact, brought to the executive staff?

A. I remember the issue being discussed by the executive staff.

Q. Whose decision, ultimately, was it to change the policy?

A. It was the consensus of the executive staff.

Q. And when was that decision?

A. Shortly before May 1st or right on May 1st. It believe within a few days of May 1st it was decided to go ahead and

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. CIV S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

Washington, D.C.
Wednesday, October 14, 1987

Deposition of:

WILLIAM A. SLATTERY,

a witness, called on behalf of the Plaintiffs' counsel in the above-entitled action, before Thomas W. Olender, a notary public in and for the District of Columbia, whose commission expires April 30, 1992, taken in the offices of the U.S. Department of Justice, Office of Immigration Litigation, 601 D Street, N.W., Washington, D.C. beginning at 9:30 a.m.

APPEARANCES:

On behalf of the Plaintiff:

STEPHEN ROSENBAUM, ESQ.
California Rural Legal Assistance
2111 Mission Street
Suite 401
San Francisco, California 94110

On behalf of the Defendant:

EILEEN A. CARTY, ESQ.
Trial Attorney
U.S. Department of Justice, Civil Division
Office of Immigration Litigation
601 D Street, N.W.
Washington, D.C. 20044

LORI SCIALABBA, ESQ.
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

ROBERT KENDALL, JR., ESQ.
Assistant Director
U.S. Department of Justice, Civil Division
601 D Street, N.W.
Washington, D.C. 20044

[51] lack of a better word, as it proceeds through the organizational hierarchy.

Oftentimes it's returned to me with further directions to delete or to add or to actually change direction. So, we do have an opportunity within Legalization to say how we think something should be done.

What comes into the final decision, what factors are finally considered in terms of Service policy, we're removed from that.

Q. What kind of paperwork was generated on this particular point?

A. Paperwork that was generated on the entire rate package, no more, no less.

Q. Memos, in other words, or policy positions, proposed policy decisions?

A. I wouldn't say proposed policy decisions. When we write the regulations, we write them in an entire package and the package goes forward and then the entire package is acted upon.

Q. Other than the preliminary working draft and the proposed regulations themselves, about how many of these drafts were prepared by you or your staff on this particular point?

A. I have no idea.

On this particular point?

[52] Q. Yes.

A. I can't say on this particular point. We never pulled them out a point at a time. They normally went up in their entirety.

Q. Would you say the paperwork – that was your term from before – the paperwork on this change, as your staff worked on it, always took the form of a draft resolution; is that correct?

A. I don't know if I want to say "always took the form of a draft regulation."

In addition to draft regulations, the Service utilizes a decision memo process. And the Commissioner, again, feels very strongly about management participating in the final decisions. And he has opened up this decision memo process to any employee in the Service who wants to submit a decision memo on any area.

That decision memo is normally distributed among his management team for comment and there are regular meetings held on these decisions.

So, something reaching the higher echelon does not necessarily have to arrive through a draft reg. It could come in on its own weight with its own decision memo.

Q. In some instances, you may actually prepare some comment on a particular point, some recommendation, as opposed to proposed regulatory language; is that correct?

[53] A. That's correct.

Q. When you say "management team," would you be considered a member of the management team?

A. Yes.

Q. In other words, the management team is broader than the executive staff?

A. That's correct.

Q. Would it include all the assistant commissioners?

A. Yes.

Q. How about the deputy assistant commissioners?

A. No.

Q. So it stops at the level of assistant commissioner?

A. That's right.

Q. Now, as far as these—you call them decisional memos, was that your term?

A. Decision memos.

Q. Decision memos.

About how many decision memos were prepared by you or your staff on this particular policy change with regard to SAWs?

A. I don't know if we prepared any.

Q. I gather there were also comments received in response to the proposed rule on this particular point, were there not?

A. There were.

[54] Q. My recollection is, again, that there were one hundred thirty comments in opposition, do you recall?

A. No.

Q. Do you recall whether there were comments on this particular physical presence requirements which were distinct from the requirement for legalization applicants?

A. I recall that individuals commented on the proposed regs for Section 210. And they also commented on the proposed regs for Section 245.

I don't recall any comment that was to be applied equally. It could have came in. I did not see all the comments. I counted on my staff to identify them and to—

Q. So those one hundred thirty may have been the same people or there may have been another one hundred thirty people?

A. That's right.

Q. But your staff would have reviewed those comments. correct?

A. Yes.

Q. Can you recall what any of the broad themes were in those comments?

A. No.

Q. Other than the comments, was there anything else that composed the administrative record here with regard to this policy change for SAWs?

[55] A. I don't know everything that the executive board took into consideration.

Q. When you say "executive board," you mean executive staff?

A. The executive staff.

Q. As far as your participation, did you have any discussions with Mr. Norton on this particular point?

MS. CARTY: I would have to object to that and instruct him not to answer.

MR. ROSENBAUM: I'm not asking for the content of it, Ms. Carty, I'm just asking him whether he had a discussion with the Associate Commissioner.

MS. CARTY: Okay, as long as you make that clear. I got the impression that were you were treading on administrative decision-making processes, but that's okay.

MR. ROSENBAUM: Well, I am treading on the administrative decision-making process.

MS. CARTY: Well, improperly treading.

You can proceed.

MR. ROSENBAUM: Yes, I'll ask the question again.

BY MR. ROSENBAUM:

Q. Mr. Slattery, did you have any discussions with Mr. Norton on this particular point of the cutoff date for applications made within the U.S. for SAW applicants?

A. I can't remember a specific discussion, although

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CIV 5-86-1343-LKK

CATHOLIC SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

DEPOSITION OF IGNACIO ANDRADE CASTILLO

Taken on behalf of the Defendants at 265 South Occidental, Los Angeles, California, commencing at 9:15 A.M., on Thursday, November 19, 1987, before Mary Lu Stein, CSR No. 7470, a Notary Public of the State of California, pursuant to Stipulation.

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:

UNITED FARM WORKERS OF AMERICA (AFL-CIO), UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., MEDINA, CHAVEZ, FRANCO-SOLORIO, ANDRADE, BAEZ-DE-HUERTA, JESUS DE GONZALEZ, JUAN PARTIDO, PABLO PARTIDO, MONTIJO, SANCHEZ, RODRIGUEZ-IBARRA, CANO, COLIB, CISNEROS:

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
By: PETER A. SCHEY, ESQ.
256 South Occidental
Los Angeles, California 90057

and

LOS ANGELES COUNTY FEDERATION OF LABOR
IMMIGRANT ASSISTANCE PROJECT
By: ANDRES BUSTAMANTE, Legal Director
515 South Shatto Place, Suite 200
Los Angeles, California 90020

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
2111 Mission Street, Suite 401
San Francisco, California 94110

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1100 Kansas Avenue, Suite C
Modesto, California 95352

FOR PLAINTIFFS CATHOLIC SOCIAL SERVICES, INC., CENTRO GUADALUPE IMMIGRATION CENTER:

CATHOLIC SOCIAL SERVICES, INC.
730 S Street
Sacramento, California 95814

FOR AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO):

ALTSHULER & BERZON
177 Post Street, Suite 600
San Francisco, California 94108

FOR LA COMMUNIDAD DE SAN JUAN:

McCUTCHEN, DOYLE, BROWN & ENERSEN
Three Embarcadero Center
San Francisco, California 94111

FOR DEFENDANT EDWARD MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES:

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION
By: ROBERT KENDALL, JR., ESQ.
and
EILEEN A. CARTY, Attorney at Law
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

ALSO PRESENT:

HARRY PRESSER (Spanish Interpreter)

[5] A. 8/7/54.

Q. How long did you reside in Mexico?

A. I lived there approximately until I was 20.

Q. After you were 20, where did you live?

A. Until I was about 20 or 21, then I moved here.

Q. When you were 21, did you make your first entry into the United States?

A. I entered the United States first time around 1975.

Q. In 1975 where did you enter the United States?

A. Through the hills of Tijuana.

Q. Did you enter with the aid of a smuggler or someone to help you enter?

A. Yes.

Q. You did not protect yourself to go up to the border and say you wanted to enter?

A. No.

Q. So is it true to say you sneaked in?

A. Yes.

Q. On that first entry in 1975, were you alone when you sneaked in or did someone else help you?

A. I, myself, alone.

Q. Now, what did you do in 1975 after you

* * * * *

[13] Q. What happened after that?

A. They kicked me back to Mexico, to Mexicali.

Q. Do you remember what date, what month, what year we are referring to?

A. It was a year in '76. I don't remember the date, though.

Q. How long did you remain in Mexico in 1976 after you departed voluntarily?

A. Just that night. I came back the next day.

Q. You entered the United States the same way you entered the first time in 1975?

A. Yes.

Q. When was your next departure from the United States?

A. May 9 of this year, '87.

Q. Could you tell me about that departure?

A. I was playing soccer one day. From there to the soccer field, a friend of mine – we were trying to look for a friend for 45 minutes to an hour. We couldn't procure him so we returned.

Q. Where was your friend located?

A. In Tijuana.

Q. Is that in California or Mexico?

A. Yes.

Q. Did you cross the border through a border

* * * * *

[19] to depart the United States and reenter?

A. No.

Q. So to the best of your recollection and, if you know, did you think you needed permission to depart the United States on May 9?

A. I didn't know.

Q. Had you known that you needed permission, would you have attempted to obtain permission?

A. I would have tried, attempted to obtain a permit.

Q. Had you attempted prior to seek permission to leave the United States and reenter?

A. No. I didn't know that that existed.

Q. After learning of the Amnesty Program, when did you file an application?

A. I heard on the radio that for people who had departed the United States and had exited and reentered, they were giving the person a certain period of time to file the application. So I went to a notary public and filled out my application and took it down to the Immigration Department.

Q. What happened?

A. They called me in in order to grant me a work permit.

MR. SCHEY: For the record, when he was talking

* * * * *

[23] Q. You are aware that you are a plaintiff in this lawsuit?

A. Yes.

Q. Could you briefly tell me how did you become a plaintiff in this lawsuit?

A. Because I realized that I no longer qualified for the Amnesty Program because of the simple fact I left the United States after May 1 of '87 for a short departure.

Q. Who told you you didn't qualify?

A. I talked to this lady attorney. Her name is Maria Orosco. She said the fact that it was very difficult for me to go ahead with the application because I left the United States after May 1 of '87.

Q. When you departed the United States on May 9, 1987, were you aware that you might jeopardize your chances for amnesty by sneaking out and sneaking in?

A. No, I didn't know.

Q. Did you talk to anyone before going out and coming back in about your chances for amnesty if you were caught?

A. No, I didn't talk to anybody about it. I just left and went.

Q. When you departed the United States on May 9 to visit your friend in Tijuana, did you know that you were

* * * * *

[28] Mexico.

Q. Were both of you related to the same individual you were looking for?

A. He is from my home town, my home state. I wanted maybe to get news about my family from him.

Q. Who accompanied you to Mexico?

Who traveled with you to Mexico? Did you discuss your trip?

A. Right after we finished the game there, we said to each—we made the remark, "Maybe we could go over there to try and procure my friend, just to see if we can talk to him for a while."

Q. Whose idea was it to sneak across?

A. I don't remember exactly whose idea it was.

Q. But you were aware that you were sneaking across?

A. What do you exactly mean by "sneaking across"?

I don't know exactly what you mean.

Q. You were aware that you did not cross at a port of entry where the Immigration Service is located.

A. Well, yes. I suppose so.

Q. You were aware you did not try to reenter at a point of entry where the Immigration Service is located?

A. Yes.

* * * * *

[34] to him that I had left, but he said there was no problem.

Q. Did you subsequently learn that he did not put that information in the form?

A. Yes. Afterwards I read about that problem that existed. Then I got in touch with this Maria Orosco I told you about. Yes.

Q. She is helping you now in your deportation hearing?

A. Not anymore, no.

Q. Is somebody else helping you now with your deportation hearing?

A. No, nobody is. I don't know what status this whole thing is in now.

Q. Do you have a date to go back to your deportation hearing?

A. Yes.

Q. Before going to Mexico on May 9, 1987, did you hear any publicity put out by the Immigration Service or any other publicity that you could not leave the country without the permission of the INS?

A. No, I never heard anything to that effect. If I had know, I wouldn't have gone back. I wouldn't have departed.

Q. When you came back, you testified you came back through a hole in the fence; is that correct?

[35] A. Yes, the wire, the fence they have there.

Q. Were there any signs saying "DO NOT ENTER HERE" or words to that effect?

A. No. Nothing like that. It didn't say, no.

Q. Does your wife or does your wife take care of the home?

A. She works.

Q. When you left the United States on May 9, 1987, did you intend to do anything illegal in Mexico or to smuggle anything back into the United States?

A. No.

Q. Was the only purpose of your visit to meet with a friend and to get news about your family?

A. Yes.

Q. When you left the United States, how long did you think you would be gone for?

How many weeks, days or hours?

A. Just that day, and then I was thinking about coming back Sunday morning.

Q. So you did not expect to be in Mexico for more than one night; is that correct?

A. No, no more than that.

MR. SCHEY: I have no further questions.

MR. KENDALL: I have two or three on recross.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS,

VS.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

DEPOSITION OF MARIA de JESUS CADENA de GONZALEZ

APPEARANCES:

MR. KEVIN D. PAGAN
Ewers, Toothaker, Abbott, Talbot & Hamilton
1111 Nolana
P.O. Box 3670
McAllen, Texas 78502
Attorney for Plaintiffs

MS. EILEEN A. CARTY
and
MR. ROBERT KENDALL, JR.
Office of Immigration Litigation
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044
Attorneys for Defendant

[8] THE INTERPRETER: I don't think she understands.

Q. (By Ms. Carty) Have you gone to Mexico—have you made any visits to Mexico since May 1, 1987?

A. Only on the 9th of May, just for shopping. I just went for that.

Q. So you did depart the United States on May 9, 1987?

A. Yes.

Q. And when did you you return to the United States?

A. The 11th of May.

Q. And what was the purpose of your trip?

A. I just went to buy tortillas, soap, things like that.

Q. Now, since November—well, on all of these occasions that you have departed the United States, you have left the United States for Mexico, how did you leave the United States?

A. By the bridge.

Q. On every month indicated?

A. Yes.

Q. On each of these occasions, how would you return to the United States?

A. Well, when I entered the United States I did not have the MICA, m-i-c-a, also known as the border crossing card. It was lost. I had lost it.

Q. So, how do you enter the United States?

* * * * *

[16] Q. So you knew that you needed the permission of the Immigration and Naturalization Service to come back in?

A. I don't understand.

Q. When you returned to the United States on May 11th, you knew that you were returning illegally?

A. Yes.

Q. Okay. Now, let me understand this. From November 6th of 1986 to May 9, you took trips to Mexico and returned to the United States. Is that correct?

A. Yes.

Q. On those occasions, how did you reenter the United States?

A. With the MICA, border crossing card.

Q. Are you aware of the new immigration law which permits certain people to remain in the United States because of continuous unlawful residence seen January 1, 1982?

A. I did not know about that.

Q. You did not know about the new amnesty provision?

A. No. I only heard.

Q. Okay.

A. I only heard, but I was told that I shouldn't go there because it wasn't true and then they were going to throw me out.

Q. Let me understand your testimony. In other words, you knew about this new law that would allow you to stay in

* * * * *

[27] A. No, I didn't think anything like that.

Q. Why did you need to take your children shopping in Mexico, especially your sick child?

A. Because I'm the only one that takes care of him and I always take him with me.

Q. Why do you shop in Mexico?

A. Because I bring back tortillas and soap and things like that that I need which are cheaper over there. That's all.

MS. CARTY: Okay. Thank you.

/s/ Maria De Jesus Cadena De Gonzalez

MARIA DE JESUS CADENA DE GONZALEZ

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. S-86-1343-LKK

CATHOLIC SOCIAL SERVICES, INC., ET AL., PLAINTIFFS,

VS.

EDWIN MEESE, III, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, DEFENDANT.

DEPOSITION OF SOFIA BAEZ de HUERTA

APPEARANCES:

MR. KEVIN D. PAGAN
Ewers, Toothaker, Abbott, Talbot & Hamilton
1111 Nolana
P.O. Box 3670
McAllen, Texas 78502
Attorney for Plaintiffs

MS. EILEEN A. CARTY
and
MR. ROBERT KENDALL, JR.
Office of Immigration Litigation
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044
Attorneys for Defendant

[3] Q. What city and state?
A. Brownsville, Texas.
Q. How long have you lived at that address?
A. About eight years.
Q. And are you married?
A. Yes.
Q. Does your spouse live with you at that address?
A. Yes.
Q. Do you have children?
A. One, but she has already married.
Q. And only you and your spouse live at this address?
A. Yes.
Q. When did you first enter the United States?
A. Since 1979, December.
Q. And to the best of your recollection, how did you enter the United States?
A. With my local card.
Q. With your – is that a border crossing card?
A. Yes.
Q. Now, do you still have that border crossing card?
A. Yes.
Q. And have you used that border crossing card on any occasion since entering the United States?
A. Yes.
Q. And you were aware that the border crossing card did [4] not permit you live permanently in the United States?
A. Yes.
Q. And did you receive the border crossing card when you gave an address in Mexico sometime in the past? Is that correct?
A. Yes.
Q. Is it true that, based on your long time living in the United States, since 1979, that you feel that you qualify for amnesty now?

A. Because of the law that came into effect, yes.

Q. Now, you are aware of the new law?

A. I have heard it talked about.

Q. Approximately, when did you first learn of this new law, you heard talk about this new law?

A. I heard on television and through this gentleman, Mr. Pena.

Q. Approximately, to the best of your recollection, do you know the month and the year?

A. I do not recall.

Q. To the best of your recollection, your understanding, what did you perceive or have an idea that the new law could do for you?

A. Well, I can't explain that.

Q. Okay. During—you said you entered the United States [5] in 1979?

A. Yes.

Q. And since 1979, have you left the United States to visit Mexico?

A. Some, several times.

Q. And how did you reenter? Did you use that border crossing card to reenter?

A. Yes.

Q. Now, have you applied to, or have you had your representative or lawyer fill an application out for legalization under section—what we call 245, amnesty program, to the best of your recollection?

A. I made application for amnesty.

Q. And do you know when?

A. Some date in May of this year.

Q. Do you know exactly what date in May?

A. No, I don't recall at this moment.

Q. Was it before you departed the United States to visit your mother on Mother's Day, or was it after your departure?

A. First, I went to visit my mother, and then I made the application.

Q. Now, when you visited your mother, were you aware that you needed permission from the Immigration Service to depart or reenter the United States?

[6] A. No, I did not know it.

Q. Did you use your border crossing card to reenter the United States?

A. Yes.

Q. Were you—did anyone stop you from reentering the United States with your border crossing card?

A. No, no one.

Q. Did anyone question you about your border crossing card?

A. No.

Q. When you filed your application for legalization, did you tell your representative that you had a border crossing card on May 5th?

A. I don't recall having told him.

Q. Are you familiar with this lawsuit and the allegations that have been made on your behalf?

A. If I know what they are doing for my case?

Q. Okay. In essence, what—the attorney has alleged that you left the United States on May 10th, 1987, and you visited your mother in Mexico for five hours.

A. Yes.

Q. That you reentered the United States by slipping in?

A. No, not hiding in because I have my crossing card.

Q. So you did present a border crossing card and was admitted?

[7] A. Yes, sir.

Q. So you did not cross the river?

A. No.

Q. You came across the bridge?

A. I have never crossed by the river. I came across on the bridge.

Q. Who asked you to join this lawsuit?

A. When I went to see about amnesty, they told my I was not acceptable, and they told me I could appeal.

Q. Did you appeal, or have you appealed?

A. Yes.

Q. Is it true to characterize that this statement that you returned without inspection as an incorrect statement?

MR. PAGAN: I'm going to object to that as calling for a legal conclusion.

Q. (By Mr. Kendall) Did you present yourself for inspection?

MR. PAGAN: Same objection.

Q. (By Mr. Kendall) Did you come across the bridge?

A. Yes.

Q. So you know the difference between sneaking into the United States and crossing the bridge?

A. But I have never come in hiding. I have always come with my border crossing card.

Q. But were you aware that the border crossing card did [8] not give you permission to remain in the United States, to live in the United States?

A. No.

Q. But on May 10, 1987 no one questioned you about your border crossing card?

A. No, no.

Q. And you returned directly to your residence in the United States?

A. Yes.

Q. Now, are you appealing your legalization claim?

A. Yes.

Q. Have you received a denial directly from the Immigration Service saying you are not eligible for legalization? Have they told you that your application is denied?

A. No.

Q. They have or have not denied your application?

MR. PAGAN: I think maybe she needs to be asked the question again.

A. No. No one from immigration has told me that my application for amnesty has been denied.

MR. KENDALL: I have no further questions.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CIV 5-86-1343-LKK

CATHOLIC SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

DEPOSITION OF JOSE TRINIDAD MORALES

Taken on behalf of the Defendants at 265 South Occidental, Los Angeles, California, commencing at 1:45 P.M., on Thursday, November 19, 1987, before Mary Lu Stein, CSR No. 7470, a Notary Public of the State of California, pursuant to Stipulation.

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:
UNITED FARM WORKERS OF AMERICA (AFL-CIO), UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., MEDINA, CHAVEZ, FRANCO-SOLORIO, ANDRADE, BAEZ-DE-HUERTA, JESUS DE GONZALEZ, JUAN PARTIDO, PABLO PARTIDO, MONTIJO, SANCHEZ, RODRIGUEZ-IBARRA, CANO, COLIB, CISNEROS:

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
By: PETER A. SCHEY, ESQ.
256 South Occidental
Los Angeles, California 90057

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
2111 Mission Street, Suite 401
San Francisco, California 94110

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1100 Kansas Avenue, Suite C
Modesto, California 95352

FOR PLAINTIFFS CATHOLIC SOCIAL SERVICES, INC., CENTRO GUADALUPE IMMIGRATION CENTER:

CATHOLIC SOCIAL SERVICES, INC.
730 S Street
Sacramento, California 95814

FOR AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO):

ALTSHULER & BERZON
177 Post Street, Suite 600
San Francisco, California 94108

FOR LA COMMUNIDAD DE SAN JUAN:

NATIONAL REFUGEE RIGHTS PROJECT
SAN FRANCISCO LAWYERS' COMMITTEE FOR URBAN AFFAIRS
San Francisco, California 94105

[13] deportation order or something.

Q. Did they advise you you had an outstanding deportation order or something?

A. No, I don't remember whether they told me that or not.

Q. I am trying to establish how the Immigration Service became aware of you.

A. Excuse me?

Q. Did you go to their office or did they come to your job or house and pick you up?

A. I went to their office.

Q. Why did you go to their office?

A. Because the phone call that I received in which they told me they were going to give me back my money, the $1,000.

Q. Now, you had put a $1,000 bond for your deportation proceeding?

A. My prior boss put that money for me, and I paid him back because he charged me for it.

Q. Is it correct to say that you received a telephone call from Immigration Service?

A. My brother-in-law's wife received the call for me because I didn't know how to talk English.

Q. To the best of your recollection, what did your brother-in-law's wife advise you that the [14] Immigration Service stated?

A. For me to show up, that they were going to give me that $1,000.

Q. What happened when you showed up?

Did you show up?

A. Yes.

Q. Could you explain what happened next?

A. They detained me. I brought along all of my receipts, but I had been here. And they said they didn't want to accept any of that or hear about any of that.

Q. Is it correct to state that you attempted to establish that you were eligible for amnesty?

A. That is what I tried to do.

Q. You were aware of the amnesty provisions then?

A. I only knew it as of the latter times because some friends of mine had talked to me about it and had made some remarks.

Q. Why hadn't you attempted to ascertain information about amnesty before visiting the Immigration Service in February of 1987?

A. Because I really haven't ascertained this whole thing yet, that it was there. I didn't know anything about it.

Q. When did you acquire sufficient information [15] about amnesty?

MR. SCHEY: I would object on the grounds that it is vague and ambiguous, "sufficient information" to what?

MR. KENDALL: To file an application.

MR. SCHEY: Do you want to clarify the question?

MR. KENDALL: Q. Prior to February 1987, did you have a basis or belief that you were qualified for amnesty under the new Immigration law?

A. I thought that I did qualify because of what people would talk to me about that. I thought I would qualify.

Q. When you visited the Immigration Service in 1987, did you tell them that you thought you were eligible for amnesty?

A. I just told them that I thought I had enough proof; that I would remain in this country.

Q. What did they advise you, the Immigration Service?

A. That they were not interested in any such proof.

Q. Did they say why they were not interested in any such proof?

A. They didn't explain nothing to me.

Q. Did you have an attorney with you?

A. No. At that point I no longer had an

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CIV 5-86-1343-LKK

CATHOLIC SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

DEPOSITION OF DOROTEO RODRIGUEZ IBARRA

Taken on behalf of the Defendants at 265 South Occidental, Los Angeles, California, commencing at 3:40 P.M., on Thursday, November 19, 1987, before Mary Lu Stein, CSR No. 7470, a Notary Public of the State of California, pursuant to Stipulation.

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:

UNITED FARM WORKERS OF AMERICA (AFL-CIO), UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., MEDINA, CHAVEZ, FRANCO-SOLORIO, ANDRADE, BAEZ-DE-HUERTA, JESUS DE GONZALEZ, JUAN PARTIDO, PABLO PARTIDO, MONTIJO, SANCHEZ, RODRIGUEZ-IBARRA, CANO, COLIB, CISNEROS:

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
By: PETER A. SCHEY, ESQ.
256 South Occidental
Los Angeles, California 90057

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
2111 Mission Street, Suite 401
San Francisco, California 94110

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1100 Kansas Avenue, Suite C
Modesto, California 95352

FOR PLAINTIFFS CATHOLIC SOCIAL SERVICES, INC., CENTRO GUADALUPE IMMIGRATION CENTER:

CATHOLIC SOCIAL SERVICES, INC.
730 S Street
Sacramento, California 95814

FOR AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO):

ALTSHULER & BERZON
177 Post Street, Suite 600
San Francisco, California 94108

FOR LA COMMUNIDAD DE SAN JUAN:

NATIONAL REFUGEE RIGHTS PROJECT
SAN FRANCISCO LAWYERS' COMMITTEE FOR URBAN AFFAIRS
San Francisco, California 94105

FOR LA COMMUNIDAD DE SAN JUAN:

McCUTCHEN, DOYLE, BROWN & ENERSEN
Three Embarcadero Center
San Francisco, California 94111

FOR DEFENDANT EDWARD MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES:

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION
By: ROBERT KENDALL, JR., ESQ.
and
EILEEN A. CARTY, Attorney at Law
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

ALSO PRESENT:

HARRY PRESSER (Spanish Interpreter)

[4] A. A year.

Q. Do you have a green card to be in the United States?

A. No.

Q. Have you ever had a green card in the United States?

A. No.

Q. When did you first enter the United States?

A. In '79.

Q. Do you remember what month?

A. June.

Q. What did you do in 1979 after you entered the United States?

A. I was working at a company where they had wood paints in Chicago, Illinois.

Q. When you first entered the United States, how did you enter?

A. Through the hills, walking on foot.

Q. Did you eventually work your way to Chicago?

A. I crossed the line, then I caught the bus.

Q. After you entered the United States in 1979, did you ever depart the United States?

A. February 18 the Immigration people apprehended me.

[5] Q. Where were you apprehended on February 1981?

A. Ventura.

Q. What were you doing in Ventura in February of 1981?

A. I was working at a restaurant.

Q. After they apprehended you, what happened?

A. I just signed the voluntary departures. Then I returned back the next day on the 19th.

Q. You voluntarily left on your own and went back to Mexico?

A. Yes.

Q. You reentered again a day or so after?

A. Yes.

Q. You used the same method of reentry?

A. Yes.

Q. What type of work did you do after you reentered in 1981?

A. Still in the restaurant in '81.

Q. Have you continually worked in the restaurant ever since you have been here?

A. No.

Q. What other type of work have you done?

A. In '82 I was working for a company. We were in the fields and picked mushrooms.

Q. How long did you pick mushrooms?

[6] A. From '82 to the present time.

Q. You are picking mushrooms now?

A. Yes, we do.

Q. Is that a mushroom farm?

A. A farm.

Q. Were you apprehended again by the Immigration Service at any later date after 1982?

A. They arrested me in '84.

Q. What did they arrest you for in 1984?

A. I was locked up in jail because of driving under the influence. They arrested me from there.

Q. What happened after they arrested you?

A. They told me if I wanted to see a judge, I could see one. And they brought me here to Los Angeles. I spent here four days.

I saw the judge, and the judge put out a bond for me for $1,000.

Q. Now, was that an Immigration judge?

A. Yes.

Q. Pursuant to an Immigration bond that was placed on you for $1,000, were you supposed to report back for a hearing?

A. Yes.

Q. Did you ever report back for that hearing?

A. Yes.

[7] Q. What happened at this hearing?

A. The hearing took place July 10, 1986. The judge ordered me that I have to go back to Mexico in order to be able to deliver that money for the bond that he put out for me. Within six months the bond was put out. So that would have been January.

It took me about four days to leave this place because I had a minor accident, and I didn't have insurance. So I wasn't able to leave the country on the date that he ordered.

So I told the person who put out the bond for me to get in touch with Immigration to explain to them my case, why I couldn't leave. Then she told me according to the Immigration, they would come pick me up from my place of detention any time from my day of being released to throw me back to Mexico. So she talked to me. So I myself, when I left the place of detention where I was in, I myself went to Mexico.

We left—I went there, but I didn't have any I.D. with me from the line because I didn't have any I.D. with me. They didn't want to accept the sheet of paper that the judge had given to me. They accepted. They asked for I.D. I think fingerprints are enough.

The paper, the sheet of paper had my fingerprints on it. They told me it wasn't enough, that I [8] needed an I.D. with a picture.

I didn't have my license with me anymore because they had rescinded it because I didn't have insurance. I went

back to Ventura after that. I found an expired driver's license I had had, then I had some problems with my employer. They laid me off for about a month and a half. I couldn't leave again to go to Mexico even though I had the I.D. with me at that point. For that purpose, I couldn't go because I didn't have a job anymore. I had to do odd jobs here and there to support my family.

Then when I went back to a full-time basis, I went back to Tijuana to deliver that paper there. Before I went to Tijuana, I came to Los Angeles and talked to an Immigration officer here to see if I was under an order of deportation. The officer told me I was under no order of deportation. I could leave any time I wanted to drop that paper over there.

So a week after that that I was in L.A., I went to Tijuana to give them that paper there. Then when I got to the line there, I gave them the paper and everything. I tried to talk to the Immigration officer there to tell them that I thought I qualified for amnesty.

The only thing the Immigration officer told me, "Here is the door. Go back to Mexico." That is what I did. I went through the door and went back to Mexico.

[9] MR. SCHEY: Off the record.

(Discussion held off the record.)

MR. KENDALL: Back on the record.

Q. The first question is that you were picked up by the Immigration Service, the first time in February 1981. Is that true?

A. Yes.

Q. You were given voluntary departure, and you departed to Tijuana?

A. Yes.

Q. You returned to the United States two days later?

A. Well, on the 19th.

Q. On or about two days?

A. Yes, a couple of days.

Q. After returning to the United States, you began working at the mushroom factory?

A. No. In '81 I went back to the restaurant.

Q. After you left the restaurant, you started working in the mushroom farm, your present place of employment?

MR. SCHEY: Wait. He said, "No."

THE WITNESS: I have always kept on working with the mushrooms except when the plant had stopped for 15 [10] days or so. Then I did odd jobs for those two weeks. And I worked at the same place.

MR. KENDALL:

Q. Again, in 1984 you were apprehended by the Immigration Service; is that correct?

A. Yes.

Q. You were placed in deportation proceedings before an Immigration judge?

A. Yes.

Q. You were found to be deportable, but you were granted until July 10, 1986 to depart the United States; is that correct?

A. The hearing was on July 10, 1986. Then I was given an extension of six months, I believe, to January 10 of the following year, he set it of this year.

Q. Your hearing was on July 10, 1986, and you were given six months voluntary departure time in which to leave without being deported; is that correct?

A. Yes.

Q. You did not leave by January 10, 1987; is that correct?

A. I wasn't able to leave.

Q. What did you do after January 10?

Did you go to the Immigration Service and advise them as to the reason why you could not leave?

* * * * *

[14] A. Yes. On my way to Tijuana going back, yes.

Q. Now, did you do that?

A. Yes, I did.

Q. Between January 17 and the time you departed for Tijuana, did you ask any Immigration officer whether you qualified for amnesty?

A. I tried to ask the officers that I gave the paper to at the border. The officer just said, "Here is the door. Here is Mexico."

Q. Do you recall what you asked the officer at the border there?

Was that at San Ysidro?

A. In San Ysidro. Right when I give him the piece of paper, he give me fingerprints. I was fingerprinted.

He told me the following:

"This is all."

Then I said, "No, I want to ask you something," but he didn't give me a chance to.

That is when he told me, "Here is the door to Mexico."

Q. So you didn't ask him about amnesty?

A. I didn't ask anything. I didn't have time to ask for anything. Nobody answered.

Q. Now, you returned to the United States

* * * * *

[18] then they started fingerprinting me. Once we finished, I was about to explain the case to the officer to ask if I was eligible for the Amnesty Program. But the only think he asked, he said, "That is all. This is the door to Mexico."

Q. So you didn't really insist about questioning him about that?

A. No.

There was a lot of people around. They didn't pay attention to me.

Q. After you departed the line, you went directly to Tijuana?

A. Yes.

Q. How long did you remain in Tijuana?

A. Just one night. That is all.

Q. How did you reenter the United States?

A. Illegally through the hills.

Q. That was on or about May 17 or 18?

A. Yes.

Q. Of 1987?

A. Yes.

Q. Is it correct to state that at no time have you asked any Immigration official in Los Angeles or at the line whether you were eligible for amnesty?

A. I didn't ask in Los Angeles. I just asked in Los Angeles about that problem with the piece of paper [19] I had. That is what I wanted to know. I wanted to deliver the paper, and I tried to really ask them when I delivered the paper at the line, you see. And then they didn't pay attention to me.

Q. Are you aware that you are a plaintiff in the lawsuit which is captioned Catholic Social Services, Inc., vs. Meese, III, Attorney General of the United States?

A. Yes.

Q. Do you know why you are in the lawsuit?

A. I think because they didn't show any respect to me because they didn't pay attention to me.

Q. Who didn't pay any attention to you?

A. The officer at the border when I tried to explain to him that I was eligible for amnesty.

Q. But you never did ask; is that correct?

A. I didn't ask because he didn't give me a chance.

Q. When you returned to the United States subsequently the next day, in fact you did report to the Immigration Service and asked for information on amnesty?

A. No.

Q. Have you sought any information on amnesty as of this date?

A. Yes, I have sought information about amnesty.

[20] Q. Have you filed an application to the best of your knowledge?

A. Yes, I have filed an application.

Q. Do you know whether your application has been filed as a special Agricultural (SAW) Status?

A. Yes.

Q. Do you know what is the status of your application?

A. I don't know anything.

MR. KENDALL: I have no further questions.

MR. SCHEY: I have a couple of questions, just very short.

EXAMINATION

BY MR. SCHEY:

Q. Is it correct that you have been living in the United States in an unlawful status continuously since 1979?

A. Yes.

Q. Have you ever had any criminal convictions?

A. No.

Q. Have you ever received welfare?

A. No.

Q. Have you ever fradulently or falsely applied for a visa?

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CIV 5-86-1343-LKK

CATHOLIC SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

DEPOSITION OF SANTIAGO COLIN FEREGRINO

Taken on behalf of the Defendants at 265 South Occidental, Los Angeles, California, commencing at 3:05 P.M., on Thursday, November 19, 1987, before Mary Lu Stein, CSR No. 7470, a Notary Public of the State of California, pursuant to Stipulation.

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:

UNITED FARM WORKERS OF AMERICA (AFL-CIO), UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., MEDINA, CHAVEZ, FRANCO-SOLORIO, ANDRADE, BAEZ-DE-HUERTA, JESUS DE GONZALEZ, JUAN PARTIDO, PABLO PARTIDO, MONTIJO, SANCHEZ, RODRIGUEZ-IBARRA, CANO, COLIB, CISNEROS:

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
By: PETER A. SCHEY, ESQ.
256 South Occidental
Los Angeles, California 90057

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
2111 Mission Street, Suite 401
San Francisco, California 94110

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1100 Kansas Avenue, Suite C
Modesto, California 95352

FOR PLAINTIFFS CATHOLIC SOCIAL SERVICES, INC., CENTRO GUADALUPE IMMIGRATION CENTER:

CATHOLIC SOCIAL SERVICES, INC.
730 S Street
Sacramento, California 95814

FOR AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO):

ALTSHULER & BERZON
177 Post Street, Suite 600
San Francisco, California 94108

FOR LA COMMUNIDAD DE SAN JUAN:

NATIONAL REFUGEE RIGHTS PROJECT
SAN FRANCISCO LAWYERS' COMMITTEE FOR URBAN AFFAIRS
San Francisco, California 94105

FOR LA COMMUNIDAD DE SAN JUAN:

McCUTCHEN, DOYLE, BROWN & ENERSEN
Three Embarcadero Center
San Francisco, California 94111

FOR DEFENDANT EDWARD MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES:

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION
By: ROBERT KENDALL, JR., ESQ.
and
EILEEN A. CARTY, Attorney at Law
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

ALSO PRESENT:

HARRY PRESSER (Spanish Interpreter)

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(No exhibits offered.)

[5] A. 167 Thomas Avenue, Oxnard, California.
Q. How long have you lived there?
A. Since '83 to the present.
Q. Are you married?
A. No, I am not.
Q. When did you first enter the United States?
A. October of '81.
Q. Where did you enter the United States for the first time?
A. The airport.
Q. Which airport?
A. In Tijuana.
Q. Where did you land?
A. Well, actually, you see, I came by bus, but I entered through the airport. You can go through there on foot across.
Q. So you entered the United States on foot?
A. Yes.
Q. Did you present yourself for inspection by an Immigration and Naturalization Service official?
A. When I came here? No.
Q. So when you entered through the airport, you snuck into the United States?
A. Yes. Snuck in.
Q. Do you remember the exact date of that

* * * * *

[10] bothered us before or anything, we didn't feel we had to hurry.

MR. SCHEY: Off the record for a minute.

(Discussion held off the record.)

MS. CARTY: Q. Have you filed an application for amnesty?

A. No. I was about to file it, but the whole problem that has arisen, I haven't filed it yet.

Q. Will you file it?

A. Yes, if I am allowed to. Yes.

MR. KENDALL: Off the record for a minute.

(Discussion held off the record.)

MS. CARTY: Q. In October of 1987 when you were apprehended and deported, were you aware that you were possibly eligible for amnesty?

A. I thought I was. That is the reason I asked my boss.

Q. Did you tell the people at the INS that you believed at that time that you were eligible for amnesty?

A. When they asked me. I was waiting for this letter from my boss so I could start getting my papers. They didn't hear or give me any explanations or anything. They just put down I had come here in '85. They didn't allow me any explanations.

They they told us we could not qualify through that job; only through getting married could we qualify.

Q. Did the Immigration officials advise you that you were not eligible?

A. Yes.

Q. Has anyone else told you that you were not eligible for amnesty?

A. Nobody else; in other words, I haven't really been to anybody that works in this field to assess me.

Q. Do you intend to do that?

A. We are working, an attorney that is dealing with this. I think they could give you a work permit for three years or so and also maybe he works for filing application for people for this program.

MS. CARTY: I don't have any further questions.

MR. SCHEY: I have a few questions.

EXAMINATION

BY MR. SCHEY:

Q. When you were apprehended by the Immigration in October 1987, did they tell you anything about whether you could apply for amnesty outside of the United States in Mexico?

[12] A. That I could do it in Mexico. They have a consulate in Mexico that could do it there.

Q. Did they refer you to the U.S. Consulate in Mexico?

A. Yes, the U.S. Consulate in Mexico.

Q. When you were in Mexico, did you find out that you could not do that?

A. I didn't even go to the consulate. We came back here right away.

Q. Did you talk to anybody in Mexico about whether it was possible for you to apply for amnesty in Mexico, or did anybody down there tell you anything about that?

A. No. Afterwards I asked the lady here that was going to make the application for us. She said that was not true; it was a big lie.

Q. Did they tell you any other rights that you have when you were apprehended and detained by the INS?

A. No, they didn't tell me anything.

Q. When they asked you to sign the voluntary departure form, tell us exactly what they said or what they did.

A. They asked me everything, my name and that kind of thing. And then the last thing they give you was a sheet of paper. They told me to sign here. They told us [13] if we signed the departure, it wouldn't affect our cases; that we could still return and file our application for amnesty.

Q. Do you remember on that form that they gave you to sign, did they point to a particular place where they wanted you to sign?

A. Yes, like this on the lower part (indicating).

Q. Do you have any criminal convictions in a criminal court?

A. They got me once while driving.
Q. Got you for what?
A. One of my blinker lights wasn't working.
Q. Other than that traffic violation, have you ever had a criminal conviction?
A. No, nobody, nothing.
Q. Have you ever received welfare?
A. No.
Q. Have you ever fraudulently applied or obtained a visa?
A. No, nothing like that.
Q. Since coming to the United States, have you ever departed for more than 35 days?
A. No.
Q. Have you ever made a fraudulent or false statement to enter the United States?

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CIV 5-86-1343-LKK

CATHOLIC SERVICES, INC. (CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL., PLAINTIFFS,

vs.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

DEPOSITION OF UVALDO FRANCO SOLORIO

Taken on behalf of the Defendants at 265 South Occidental, Los Angeles, California, commencing at 11:00 A.M., on Thursday, November 19, 1987, before Mary Lu Stein, CSR No. 7470, a Notary Public of the State of California, pursuant to Stipulation.

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:
UNITED FARM WORKERS OF AMERICA (AFL-CIO), UNITED CALIFORNIA MEXICAN-AMERICAN ASSOCIATION, NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., MEDINA, CHAVEZ, FRANCO-SOLORIO, ANDRADE, BAEZ-DE-HUERTA, JESUS DE GONZALEZ, JUAN PARTIDO, PABLO PARTIDO, MONTIJO, SANCHEZ, RODRIGUEZ-IBARRA, CANO, COLIB, CISNEROS:

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.
By: PETER A. SCHEY, ESQ.
256 South Occidental
Los Angeles, California 90057

and

LOS ANGELES COUNTY FEDERATION OF LABOR
IMMIGRANT ASSISTANCE PROJECT
By: ANDRES BUSTAMANTE, Legal Director
515 South Shatto Place, Suite 200
Los Angeles, California 90020

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
2111 Mission Street, Suite 401
San Francisco, California 94110

FOR PLAINTIFF CHAVEZ:

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
1100 Kansas Avenue, Suite C
Modesto, California 95352

FOR PLAINTIFFS CATHOLIC SOCIAL SERVICES, INC., CENTRO GUADALUPE IMMIGRATION CENTER:

CATHOLIC SOCIAL SERVICES, INC.
730 S Street
Sacramento, California 95814

FOR AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO):

ALTSHULER & BERZON
177 Post Street, Suite 600
San Francisco, California 94108

FOR LA COMMUNIDAD DE SAN JUAN:

NATIONAL REFUGEE RIGHTS PROJECT
SAN FRANCISCO LAWYERS' COMMITTEE FOR URBAN AFFAIRS
San Francisco, California 94105

FOR LA COMMUNIDAD DE SAN JUAN:

McCUTCHEN, DOYLE, BROWN & ENERSEN
Three Embarcadero Center
San Francisco, California 94111

FOR DEFENDANT EDWARD MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES:

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION
By: ROBERT KENDALL, JR., ESQ.
and
EILEEN A. CARTY, Attorney at Law
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

ALSO PRESENT:

HARRY PRESSER (Spanish Interpreter)

[5] A. On 37th Street.
Q. Los Angeles?
A. Los Angeles.
Q. Where did you reside before you came to Los Angeles?
A. Guadalajara, the State of Jalisco.
Q. How old are you?
A. 30 years old.
Q. What is your place of birth?
A. State of Jalisco, Mexico.
Q. Your date of birth?
A. 8/3/57.
Q. Are you married or single?
A. I am married.
Q. What is the name of your spouse, please?
A. Monica Lupina de Franco.
Q. Does she reside with you at your current address?
A. Yes.
Q. Do you have any children?
A. Yes.
Q. How many?
A. Three.
Q. What are their ages?
A. The ones here in Los Angeles or the ones in [6] Mexico? Have two here and one in Mexico.
Q. How many children do you have here?
A. Born here?
Q. Born here or residing here.
A. Three that are living with me.
Q. These three, are they citizens of the United States?
A. Just two of them are.
Q. Do you have children in Mexico also?
A. One.
Q. Is that a citizen of Mexico?

A. Well, he is from Mexico, but he is living here with me.
Q. The three children include one citizen of Mexico and two United States citizens?
A. Right, yes.
Q. What is the age of the child who was born in Mexico?
A. Nine years old.
Q. The children born in the United States?
A. Seven and three.
Q. When and where were you married?
A. I was married in a church ceremony in Mexico. I don't quite remember the date, though. I was married here civilly by the civil authorities.
[7] Q. Have you had only one marriage or more than one marriage?
A. Just one.
Q. So it is two ceremonies with the same person?
A. Yes.
(Whereupon Mr. Kendall enters the deposition proceedings.)
MS. CARTY: Q. When did you first enter the United States?
A. '79.
Q. Where did you first enter the United States?
A. Through the hills.
Q. Do you remember the month or the day of your first entry into the United States?
A. Around May of '79.
Q. How did you enter the United States? Did you have a visa?
A. Through the hills.
Q. Did you enter with the assistance of a smuggler?
A. Yes.

Q. Did you have to pay that person?
A. Yes.
Q. Who entered the United States with you in

* * * * *

[14] MR. SCHEY: Just for the record, even though I conferred with the deponent, I think it is clear that he was just confused as to his reentry date. Since he was apprehended on Saturday night, and that is a matter of record, it is obvious that he returned late that evening on Sunday night.

In fact, he was in line in detention on Sunday night, and he had been in detention Saturday.

MS. CARTY: Q. Now, what did you do from 7:00 P.M. on Saturday until 11:00 P.M. on Saturday in Mexico?

A. We didn't last there for four hours. We left here at 7:00 to Tijuana.

MR. SCHEY: For the record, when he says "here," can you clarify your question about that since the record wouldn't be clear?

MS. CARTY: Q. What do you mean by you left from "here" at 7:00 P.M.?

A. Los Angeles.
Q. How long did you spend in Mexico?
A. 45 minutes to an hour more or less.
Q. What did you do during that hour?
A. We were looking for the address of this friend of ours.
Q. What is your friend's name?
A. I don't remember exactly.
Q. What happened then?

* * * * *

[39] Q. Have you lived continuously in the United States since approximately May 1979?

A. Yes.

Q. When you were interviewed on your application for legalization, did the INS person interviewing you give you any indication one way or the other whether they were going to recommend that your application be approved or denied?

A. Yes.
Q. What indication did they give you?
A. Deportation.
Q. Why was that?
A. Because we departed the United States in '87.
Q. Is that in May of 1987?
A. May of '87.

Q. Before you went to Mexico in May of 1987, had you heard any publicity that would list your rights to legalization if you left and came back without inspection?

A. No, never.

Q. If you were required to leave the United States or if you were deported from the United States what hardship would that cause to you or your family members?

A. Our separation from each other. I would have to be separated from my family.

Q. Do you currently support your children?
[40] A. Yes.

Q. What is your understanding what your prospects would be for employment in Mexico if you were deported?

A. It would be very difficult. I don't really think I could find beneficial work there.

Q. Would it, therefore, become difficult to support your family?

A. In Mexico it would be extremely difficult.

Q. Have your United States citizen children lived in the United States all of their lives?

A. Yes.
Q. Did they attend school here in the United States?
A. Yes, they are still in school.
Q. Does your wife and one child, or do you believe that your wife and one child who was born in Mexico qualify for legalization or amnesty?
A. Yes, they do qualify.
MR. SCHEY: I have no further questions.
MS. CARTY: I just have a few questions.

EXAMINATION

BY MS. CARTY:
Q. When the INS apprehended you after you came

DECLARATION OF ALFONSO LARA YANEZ

I, Alfonso Lara Yanez, depose and say:

1. I am a citizen of Mexico and have resided continuously and unlawfully in the United States since January 1971.

2. I have had no criminal convictions in the United States or Mexico, have never received public assistance, and have never obtained a visa by fraud. Since January 1971 I have never been outside of the United States for longer than about 30 days and have not been absent for a total of 185 days or more. I am informed and believe that I qualify for legalization as a result of my unlawful residence in this country since January 1981.

3. On or about May 7, 1987, I departed the United States and entered Mexico to celebre Mothers Day with my mother. I travelled with Eulalio Gonzalez Yanez, a cousin who I live with in Los Angeles. My mother lives in Pachuca, State of Hidalgo; Mexico. We returned without inspection on or about May 17, 1987, near Tijuana, Mexico.

4. I did not know at the time that I departed that my absence would make me ineligible for legaliation. Had I known this, I would not have left.

5. After my return I read in the Spanish press various articles dealing with the amnesty program. I read articles in which INS officials were quoted as saying that people who left and returned without inspection after May 1, 1987 were ineligible for amnesty. To confirm this I visited the offices of Catholic Charities on Ninth Street in Los Angeles, which was handling amnesty applications, and was advised that my absence from May 7 to May 10th made me ineligible for legalization.

6. Relying on the information I had read in the newspapers, confirmed by my visit to Catholic Charities in

Los Angeles, I did not apply for legalization on or before May 4, 1988. I believed that it would be a waste of money for me to apply because the INS took the position that I was ineligible.

7. I visited the offices of Hermandad Mexicana Nacional in Los Angeles on May 26, 1988, and was advised that a court had issued a decision a few days before May 4, 1988 changing the INS policy and allowing people in my situation to be considered for amnesty. This was the first time that I learned that I might qualify for legalization.

8. I wish to apply for legalization and believe that I qualify but for the fact that I did not apply on or before May 4, 1988.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 26th day of May, 1988, in the City and County of Los Angeles, State of California.

/s/ Alfonso Lara Yanez
ALFONSO LARA YANEZ

DECLARATION OF TRANSLATION

I, Jacqueline Ligua, depose and say:

DECLARATION OF RAOUL AROZ

I, Raoul Aroz, depose and say:

1. I am employed by Catholic Charities of Los Angeles (hereinafter "Catholic Charities"). I previously served as the Director of Operations for the Legalization Program, and currently serve as Legislative Analyst. Catholic Charities is a Qualified Designated Entity (QDE) with a contract with the INS to screen and process legalization applications. Catholic Charities serves the tri-county area of Los Angeles, Ventura, and Santa Barbara.

2. In my capacity as Director of Operations for legalization, I closely monitored INS' implementation of the legalization program, and Catholic Charities' screening and processing functions. Catholic Charities provided legalization screening and/or processing assistance to over 300,000 potential applicants and has filed over 30,000 applications with the INS. I have attended numerous meetings and training sessions on legalization. The information provided below is based upon my experience described above.

4. I am aware of the issues peresented in the *Catholic Social Services v. Meese* litigation and the injunction issued by the court on April 22, 1988.

5. Until the issuance of the court's April 22, 1988 injunction, the INS adopted the position and advised QDEs, other non-profits, and the immigrant community that potential applicants who briefly departed the United States after the agency's last-date-of-reentry rules were ineligible for legalization. As to Special Agricultural Workers (hereinafter "SAWs"), INS adopted and publicized the position that reentries after the agency's last-date-of-reentry rules terminated the applicant's right to apply in the United States. QDEs, including Catholic Charities, recommended to many applicants that they not file legalization applications because they were deemed

statutorily ineligible by the INS. Article IV, paragraph 3.2 of the Cooperative Agreement between the QDEs and the INS requires staff of QDEs to comply with all INS regulations relating to the legalization program. Many *CSS v. Meese* class members, numbering in the hundreds or thousands, remain in the country but failed to file their legalization applications because they were advised by the INS, or a QDE under contrct with the INS, that they did not qualify as a result of reentries after INS' various last-date-of-reentry rules, and they did not want to waste the filing fees and costs associated with filing an application. To the best of my knowledge the INS not yet even notified the local Legalization Offices of the court's ruling, and the vast majority of QDEs, non-profits and class members remain unaware of the court order. During the final days of the application period Catholic Charities and other QDEs are being flooded with applications. The resources of these organizations is being dedicated to completing these applications on or before May 4, 1988, and the organizations therefore do not have the resources to widely publicize the court's April 22, 1988 ruling. Because their resources are stretched so thin, the QDEs are not in a position to handle a last minute rush by *CSS v. Meese* class members. Unless the court orders an outreach effort by the INS on the change in policy, and an extension of the application period, many class members will never benefit from the legaliation program or the court's injunction.

6. Many of the class members have departed the United States because they were led to believe that they were inelgible for legalization by the INS. Others were apprehended by the INS while attempting to return to the United States other than on INS advance parole and thereafter, while still in INS custody, signed "voluntary departure" forms (INS form I-274) because they were deemed ineligible for legalization and were led to believe

they had no right to remain in the U.S. Thousands of class members have departed or been expelled from the United States solely because of reentries after INS' various last-date-of-reentry rules. To the best of my knowledge, even though SAWs come from many countries, the only sites at which applications can be filed abroad are located in Mexico. SAWs from other countries improperly expelled by the INS must now make their way into Mexico to apply for SAW status abroad. However, the Mexican government has not granted permission for SAWs to enter their country to apply for SAW status. Class members expelled from the U.S. will never benefit from the legaliation program if they are not permitted to return to the U.S. and to file their applications after May 4, 1988.

7. In many cases class members apprehended by the INS refued to sign "voluntary departure" forms and Orders to Show Cause ("OSCs") were issued against them initiating deportation proceedings. IRCA and INS' regulations require that such persons must file their legalization applications within thirty days of the issuance of the OSC. Many class members failed to file legalization applications within 30 days of the issuance of the OSC because they were led to believe that they were ineligible for legalization as a result of INS' various last-date-of-reentry regulations. Well over one hundred class members fall in this category. These class members will never benefit from the legalization program if they are not provided notice and permitted to file their applications after May 4, 1988.

8. Rather than informing legalization applicants and potential applicants seeking "advance parole" that the information they provided would be confidential (as part of their legalization application), they were administered "Miranda warnings" and advised that their statements would be used against them in future administrative and/or criminal proceedings. This policy discouraged ap-

plicants from seeking advance parole to depart the country. Advance parole was also denied to aplicants unless they could establish through documentary evidence that they needed to travel for family emergency reasons. In order to identify and provide a remedy to class members who were denied advance parole, the INS should be required to review its records, identify, and notify such class members of their right to apply for legalization even if they departed the country and returned after being denied advance parole.

9. Class members who were improperly expelled from the country under voluntary-departure at government expense, or under deportation orders, will continue to be discouraged from filing their applications if they are now required to file waivers of excludability. The INS requires legaliation applications to be accompanied by separate applications for waivers of excludability (with an additional $35 filing fee) if the applicants was previously deported or removed under volantary departure at government expense.

10. The INS has recommended denial or denied many applications filed by class members solely on the basis of 8 C.F.R. section 245a.1(g). Many such class members are not represented by counsel. Others are represented by QDEs and non-profits with limited resources and ability to pursue administrative appeals. Many of these class members will never benefit from the court's injunction unless the INS is required to identify such cases, notify the class members and the DQEs or non-profits which prepared their applications, reopen cases in which denials have been issued, and remand cases in which denials have been recommended.

11. As a number of class members have moved without advising the INS of their new addresses, whatever individual notice is required by the court should be provid-

ed to both the applicant at his/her last known address, as well as the QDE or non-profit which prepared the application for filing.

12. In fashioning its remedies in this case, the court should be aware that the majority of legalization applicants filed or attempted to file their applications without the assistance of a QDE or non-profit. The majority of applicants are basically unfamiliar with their rights under the IRCA and have heavily relied upon information disseminated through the media and at community meetings by the INS, or information provided by QDEs and other non-profits during community and training meetings. Most applicants speak Spanish or Asian languages rather than English, and the majority of applicants have little formal education.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 2nd day of May, 1988, in the City of Los Angeles, State of California.

/s/ Raoul Aroz

RAOUL AROZ

DECLARATION OF AURORA TABANICO

I, AURORA TABANICO, declare as follows:

1. My name is AURORA TABANICO and I live with my husband, FELIPE TABANICO, at 861 20th Street, Douglas, Arizona 85607.

2. ROBERTO MALDONADO, born July 27, 1979, is my nephew (his mother is my sister). ROBERTO has lived with my husband and me in Douglas, Arizona, since December 1, 1979.

3. ROBERTO has lived with my husband and me continuously since December 1, 1979. We became his legal guardians on September 9, 1985, in the Superior Court of Cochise County, Arizona.

4. On November 8, 1987, my husband and ROBERTO went to Agua Prieta, Sonora, Mexico, to get haircuts. Agua Prieta is right across the border from Douglas, Arizona. The barber shop was closed so my husband and ROBERTO went to visit relatives in Agua Prieta before coming back to Douglas.

5. At approximately 9:00 p.m. on Sunday, November 8, 1987, my husband and ROBERTO arrived at the Port of Entry in Douglas, Arizona. My husband is a lawful permanent resident of the United States and showed the inspector his card. My husband then showed the inspector a local border crossing issued to ROBERTO's mother which listed ROBERTO on it.

6. The Immigration Inspector questioned my husband and ROBERTO. My husband told the inspector that ROBERTO lives with us in Douglas, Arizona. The inspector pulled the local border crossing card and refused to allow ROBERTO to enter the United States.

7. ROBERTO MALDONADO is eligible for legalization under the Immigration Reform and Control Act of 1986. He has lived continuously in the United

States for more than 180 days since January 1, 1982, and he does not have a criminal record.

8. ROBERTO MALDONADO has lived with my husband and me since he was three months old. He is now in the second grade at the Douglas Public Schools. He has never lived in Mexico. We are raising him as our son. ROBERTO intends to apply for legalization under the terms of the Immigration Reform and Control Act of 1986. His application is now being prepared. Except for the crossing into Mexico on November 8, 1987, ROBERTO meets all of the requirements of the law for legalization under IRCA.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Douglas, Arizona, on this 23rd day of November, 1987.

/s/ Aurora Tabanico

AURORA TABANICO

DECLARATION OF CARMEN TORRES

I, CARMEN TORRES, do declare

1. I ws born on August 24, 1940 in Guanajuato, Mexico. I currently live in San Pablo, California. I originally entered the United States in September 1975, at San Ysidro, California without inspection.

2. I am applying for Status as a Temporary Resident through the Immigration Reform and Control Act (IRCA) by virtue of the fact that I entered the United States without permission prior to January 1, 1982.

3. I have eight children and a husband who live with or near me in the United States. Two of my children are U.S. Citizens. All of my other children and my husband will be applying for legalization status.

4. I have been advised that I am eligible for legalization, except for the incident described below. I have lived in the United States since before January 1, 1982. I have not received government benefits and will not do so in the future. I did have one departure from the United States in September 1985 when I went to see my sick father in Mexico. I had already made plans to return to my home in Richmond, California, after a few weeks, when suddenly on November 8, 1985 I became ill and had to have emergency surgery on my kidney. I was unable to travel and ended up staying nine months in Mexico. I have been told that this should not be a hindrance in my application for legalization, as I can supply proof that I was seriously ill and that I could not travel.

5. During the week of June 14 to June 21, 1987, I went down to San Ysidro, California to meet my sons, Refugio and Jesus Torres, who were coming to the United States from Mexico. I was detained by the I.N.S. near the border and I received voluntary departure. I left the United States as was requested of me and I returned within two days. I

have been told that because of this two-day departure, I do not qualify under the legalization law as it now stands.

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED this 1st day of December, 1987 at Oakland, California.

/s/ Carmen Torres
CARMEN TORRES

I declare that I am fluent in the English and Spanish languages and that I interpreted the foregoing from English to Spanish in the presence of the above-signed person and that she affirmed to me that she understood what is said and that it is true.

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED this 1st day of December, 1987, at Oakland, California.

/s/ Andrea Savedra
ANDREA SAVEDRA

STATE OF NEW YORK)
COUNTY OF NEW YORK)

1. My name is Yves Lorange. I am a native and citizen of Canada.

2. To the best of my recollection, I entered the United States for the first time in or about April 1979 by car through Champlain, New York, at the United States-Canadian border. I have no recollection of being examined regarding the nature of my visit.

3. I have permanently resided in the United States in unlawful status since April, 1979.

4. I have never committed any crimes in the United States or abroad.

5. I have never applied for or received a visa through false representations.

6. I have been consistently employed and have regularly filed required tax returns.

7. I have only briefly departed the United States since commencing unlawful residence here. In 1981, 1983, and 1984, I departed the United States for weekend visits with my parents in Canada. In October 1986, I departed for a ten day vacation. I always returned by car from Canada through Champlain, New York, and to the best of my recollection, I never made affirmative misrepresentations during my reentries, and I was never questioned in depth.

8. On June 20, 1987, I departed for two days to visit my family in Canada. I again returned by car through Champlain, New York. On August 12, 1987, I again departed for a brief vacation, and returned three weeks later by car through Champlain, New York. I was not questioned in depth upon either re-entry, and I did not make any affirmative misrepresentations upon either re-entry.

9. At the time of my 1987 departures, I was totally unaware of the Immigration and Naturalization Service requirement that I not depart the country after May 1,

1987 without permission. Although I read the newspapers daily and frequently listen to the radio and television, I never read or heard any Immigration and Naturalization Service announcement concerning the prohibition against departures after May 1, 1987. No one ever advised me that I could not leave the United States after May 1, 1987. Had I known, I would never have left the country because I believed I was qualified for amnesty.

10. I recently contacted the Legalization Support Project of Volunteers of Legal Service for assistance with my amnesty application. The staff attorneys advised me that I do not qualify solely because I departed and returned subsequent to May 1, 1987 without advance parole.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: New York, New York
December 4, 1987

/s/ Yves Lorange
YVES LORANGE

DECLARATION OF ONESIMO NUNEZ-SANCHEZ

I, ONESIMO NUNEZ-SANCHEZ, DEPOSE AND SAY:

1. I am a citizen and national of Mexico.

2. I entered the United States in 1970 without inspection at San Ysidro, California, and have, since that date, resided unlawfully in this country.

3. I live in with my wife and two United States children, ages 9 and 11, in Parlier, California. I am employed in agricultural work and support my wife and children. My employer is Okubo Farms, Inc., Reedley, California.

4. My wife came to the United States in May 1975 and has been residing here in unlawful status since that time.

5. To the best of my recollection, I have only been arrested twice, once in 1978, for disorderly conduct, and once in 1982 for drinking in public. I believe that the cases against me were eventually dismissed.

6. I have not received public assistance in the United States.

7. On or about April 25, 1987, my wife and I travelled to Mexico. This was the first time that I departed the country since I entered in 1970. We went to San Luis Rio de Colorado, in Sonora, Mexico, because my brother was very ill and I wanted to be by his side. I learned of my brother's condition through a telephone call from his wife from Mexico. He was urinating blood and was described to me as being very ill.

8. At the time we left the United States, we did not intend to abandon our residence in the United States. At the time of my departure I was very distrought and gave no thought to how I would return. I did not intend to engage in any criminal or immoral acts abroad; I only wanted to be with my brother, who I thought may be dying.

9. Before leaving the United States we were not aware

of the amnesty program, or of the fact that we might qualify for such a program. We had not heard any publicity regarding the need to obtain advance parole from the INS before leaving the country. If we knew about such a requirement, we would have sought permission to depart the country. While I was in Mexico I was never made aware of the fact that on May 1, 1987, the INS issued final regulations regarding legalization.

10. We returned to the United Staes on or about May 6, 1987, without inspection, near San Ysidro, California.

11. We were apprehended by INS agents in San Ysidro, approximately 15 minutes after reentering the country.

12. The apprehending agents insisted that we sign voluntary departure forms. I was told that if I did not sign the voluntary departure form I would be detained for at least fifteen days. They became angry when I refused to sign the form. I did not sign the form because I could not understand it. Even though I advised these agents that I had been living unlawfully in the United States since 1970, they did not advise me regarding any rights that I may have to amnesty or registry. I was afraid during this time and felt helpless and completely without rights. My wife was also not advised of any rights regarding the amnesty program.

13. I was held in a detention center in San Ysidro for about 4 or 5 days, and then transported to another detention center in Inglewood, California, where I was held for about another ten days before I was released on a bond of $2,000. My wife was released on the same date I was, also on a bond of $2,000.

14. At the time of our release we were again not advised of any rights we might have under the amnesty program. Instead, we were advised that deportation proceedings would be initiated against us. The INS has com-

menced deportation proceedings against me and my wife. The INS charges that we are deportable because we entered the United States without inspection in May 1987. Both the Immigration Judge and the INS Trial Attorney have stated in my hearing that I do not qualify for legalization because I entered the United Staes in May 1987 without inspection.

15. My family is poor and it causes us extreme hardship to have to undergo deportation proceedings. I do not have the ability to retain private counsel, and each appearance I am forced to make places my job in jeopardy and results in a loss of income badly needed for my family's support. I have already been required to appear four times before an Immigration Judge; each time I must travel about five hundred miles between my home and Los Angeles.

16. I desparately need a temporary work permit from the INS. I have had great difficulty locating permanent employment with a temporary work permit. I have only been at my present job for one week, and expect the job to last only two more weeks. I cannot support my family unless I can obtain a work permit.

17. The expulsion of my wife and myself would cause severe hardship to ourselves and our children. My United States children have never been to Mexico before. We would be forced to either move our children to Mexico, where educational opportunities and health services are barely available, or leave our children behind to be placed in a foster home in the United States. I would find it very difficult to find employment in Mexico, and therefore I would face enormous difficulties supporting my family if expelled.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 2nd day of December 1987, in the City and County of Los Angeles, State of California.

/s/ Onesimo Nunez-Sanchez
ONESIMO NUNEZ-SANCHEZ

DECLARATION OF TRANSLATION

I, Sister Annette Debs, depose and say:

DECLARATION OF EDUVIJES MARQUEZ

I, Eduvijez Marquez, declare:

1. I am a Mexican citizen.

2. I have lived continually in the United States, undocumented, since December of 1976.

3. I have never been arrested or convicted of any crime here in the US or in another country.

4. I live with my husband, Roberto Marquez, and my two daughters, who are US citizens. The oldest daughter, Ebelia Maria Marquez, is 8 years old and the younger daughter, Mariela Marqeuz, is 6. Both were born at Stanford, California.

5. Between 1981 and 1987, I worked as a housekeeper. Now I am not working, except that I take care of the children and the house. My husband supports the family with his work as a landscape gardener. He earns about $700 every two weeks, or $1,400 a month.

6. In 1978 and 1979, my daughters received AFDC assistance for 2 months. My husband and I had a fight and he left home for this time. Since I wasn't working at the time, I couldn't support my daughters. My husband returned after two months, and my daughters stopped receiving AFDC. Aside from this time, no one in my family has ever received any public assistance.

7. Since the time I began living here in the US, I had never left this country, until I left in May of 1987 for one month. This was my only departure in 11 years.

8. My brother, Rojeillo Reyes, died on May 17, 1987, in East Palo Alto, California.

9. On May 22, 1987, I left the US and went to San Nicolas de Ibarra, Jalisco, Mexico, to take the body of my brother to my parents' home. My mother had not seen my brother for four years and she wanted to see him one last time before they buried him.

10. I didn't know that if I left the US without the permission of Immigration, I wouldn't be able to "legalize" afterwards. I thought that, after living here for so long, I would still be able to be eligible for amnesty. I had never heard anything put out by Immigration saying that people who left the country after May 1, 1987 weren't going to qualify for amnesty. If I had known this, I would have applied for the permision to leave.

11. I only left in order to take the body of my brother to the home of our parents in Mexico. I wouldn't have left if it had not been an emergency.

12. When I went to Mexico, I wasn't thinking about how I would be able to return. I was very rushed and upset and I only thought about leaving. I got a national identity document from the Mexican consular office in San Jose, California, in order to be able to enter Mexico.

13. When I left the US, I wasn't thinking for a moment that I would leave permanently. My husband, my house, my entire life was here. I knew that I would return in a few weeks, and in fact I returned on June 22, 1987.

14. I returned to the US without inspection, on foot, through Tijuana. When I returned, I didn't realize that the return could affect my eligibility for amnesty. I thought that if the Border Patrol caught me, I would still be able to legalize because I had lived here for so many years.

15. If I am not permitted to legalize, it would be a great tragedy for my whole family.

16. My husband is eligible for amnesty and is applying. My daughters are US citizens. But if I am deported, the whole family would have to leave this country and live in Mexico. The girls are in school here, and are learning very well, completely in English. The school in San Nicolas, where my parents live, is not very good, unlike the schools here, and there is no secondary school. You have to pay a lot to go to school after the sixth grade in

another town, and it's likely that we would not be able to pay what is required. There is a lot of unemployment in San Nicolas – and now, much more than when I left there in 1976. It is very hard to find work, and they pay very little. Here in East Palo Alto, we live in a house which we are buying. If we have to go to Mexico, we would have to live with my parents. There are seven people living in a house with only three bedrooms. We would have to sleep on the floor. Life would be very hard for me and for my family if we had to leave our home here and go to Mexico. It would be very cruel, after living here for so long, to have to go live in Mexico.

17. I have not yet applied for amnesty because the lawyers at Catholic Charities and at Legal Aid of San Mateo County have told me that it's possible that I don't qualify, because of the departure in May. We don't have the money to waste in applying if there is no chance that I will be able to legalize. If the lawyers tell me that I might possibly qualify, I will submit my application immediately. I am praying for the chance, and I have faith that the laws of the US will not be so cruel as to deny this chance.

I declare under the penalty of perjury that the above facts are true and correct. Executed this ____ day of December, 1987 in the county of San Mateo, State of California.

CERTIFICATION OF TRANSLATION

I, Jennifer L. Wright, certify that I am competent to translate from Spanish to English, and that the above is a true and correct translation of the attached *Declaracion de Eduvijes Marquez*.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of December, 1987, in the county of San Mateo, state of California.

/s/ Jennifer L. Wright
JENNIFER L. WRIGHT
Declarant

DECLARATION

STATE OF TEXAS
COUNTY OF WEBB

I, Francisco Aboytes-Alberto, depose and say:

1. I am a citizen and national of Mexico. I was born on October 4, 1961 in Comonfort, Guanajuato Mexico.

2. I have continuoulsy resided in the United States in unlawful immigration status since approximately August, 1979.

3. My address is 4306 Callerman, San Antonio, Texas.

4. I believe that I qualify for Legalization under Sec. 245A of the Immigration Reform and Control Act of 1986.

5. I have no criminal convictions and have never received public assistance in the U.S.

6. I have never applied for or obtained a Visa through the use of false statements.

7. In late June of 1987, I left the U.S. and travelled to Guanajuato, Mexico because I received word that my father was extremely ill and would be undergoing surgery. Since coming to the United States in 1979, I had seen my parents only once in all these years. I wanted to see my father who was sick, at least one more time, in case the illness resulted in his death.

It was imperative that I go to see my parents because I ws the only one in my family who could take care of them while my father was ill and who could give them economic support. The only family member nearby could not take care of my parents because he worked and could only care for his own family.

8. Prior to departing the United States I heard no publicity regarding the need to obtain INS permission to leave the country. At the time of my departure I did not intend to give up my residency in the U.S., or my Legalization rights.

9. Had I known that it was necessary for me to obtain the

* * * * *

no thought to how I would return.

11. I intended to return within approximately 10 days.

12. After my father's operation my mother, who had just been operated, then became ill with stomach problems such as vomiting and not being able to hold down food. I, therefore was forced to remain in Mexico to care and support her and my father. She could not eat, so I had to help her eat liquids until she could eat regular foods.

13. I therefore unexpectedly and reluctantly was not able to return to the U.S. until approximately November 15, 1987.

14. I returned to the United States without inspection near Laredo, Texas. At that time, I believed that if I was apprehended by the INS, I would be allowed to apply for Legalization because of my many years of residency in the U.S.

15. Shortly after entering the U.S., I was seriously injured while riding on a freight train trying to get home to San Antonio, Texas. I have been in the hospital ever since with a broken hip, and an open wound extending from the testicles all the way to the front of my hip, and other serious injuries.

16. I wish to apply for Legalization in the United States and I am receiving assistance in the prepration of my application from Centro Aztlan, a non-profit organization accredited by the Board of Immigration Appeals, in Laredo, Texas.

17. It would cause me extreme hardship if I am denied legalization and forced to return to Mexico.

18. The medical staff has advised me that the medical care which I would receive in Mexico for my injuries would be completely inadequate and that my condition is so serious that it would be permanently injurious and detrimental to my health for me to be moved to Mexico,

which does not have the required physical facilities for my recovery. However, with the medical attention I am receiving in the U.S. I am told that I should have complete recovery and with therapy be able to resume a normal and productive life.

/s/ Francisco Aboytes-Alberto
FRANCISCO ABOYHTES-ALBERTO

I declare that I am employed by Centro Aztlan, and that I am fluent in both the English and Spanish language. I translated the declaration of Francisco Aboytes-Alberto, dated December 17, 1987, to him, prior to its execution, and he indicated that its contents were accurte.

/s/ Angelina Moreno
ANGELINA MORENA

SWORN AND SUBSCRIBED TO BEFORE ME, this the 17th day of December 1987.

/s/ Rosa Elia Morales
ROSA ELIA MORALES
Notary Public
State of Texas

"My commission expires June 29, 1988."

DECLARATIN OF SARAH B. IGNATIUS

I, Sarah B. Ignatius, under penalty of perjury under the laws of the United States, declare as follows:

1. I am the Staff Attorney for the Joint Legal Task Force on Central American Refugees (JLTF), located at 969 Eighth Avenue, Seattle, Washington 98104.

2. The JLTF represents Salvadoran and Guatemalan refugees applying for asylum in deportation proceedings brought by the Immigration and Naturalization Service in Seattle, Wshington, and advises other Salvadorans and Guatemalans concerning their legal rights.

3. A number of people whom we represent or advise are people who would be eligible for amnesty under the Immigration Reform and Control Act of 1986 (IRCA) as pre-1982 entrants except for the fact that they departed the United States for temporary periods subsequent to the enactment of IRCA and prior to or during the IRCA application period without obtaining advance permission from the Immigration and Naturalization Service. These peoples' purposes for departing the United States were innocent, such as family, emergency or other innocent reasons.

4. Some of these people returned illegally to the United States subsequent to May 1, 1987, and others remain outside the United States since they do not know what to do and do not want to return illegally.

5. Many, if not all, of these people did not know of any advance parole requirement prior to their departure from the United States.

6. To my knowledge the Immigrtion and Naturalization Service has not publicized to the general public the need for people eligible for amnesty under IRCA as pre-1982 entrants to obtain advance parole prior to their departure from the United States.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 2nd day of November, 1987.

/s/ Sarah B. Ignatius

SARAH B. INATIUS

DECLARATION OF PETER WALL

I, Peter Wall, depose and say:

1. I am a citizen and national of Mexico.

2. I entered the United States on or about January of 1980 on a visa which expired approximately six months later.

3. I have maintained unlawful residence in the United States since January 1980.

4. I have not been convicted of any crimes, have not received any public assistance and have never applied for a visa through false statements.

5. I have been advised by the legalization project of World Relief that I qualify for legalization but for the recent entry into the United States described below:

i) I am employed as a truck driver by Deese Express in Dinuba, California. On December 5, 1987, my boss instructed me to deliver a load of produce to Toronto, Ontario, Canada. I agreed to do this completely unaware that my departure would affect my right to legalization. In fact, I had applied for legalization before departing the United States.

ii) I returned to the United States approximately two days after leaving. I returned in the same truck owned by my employer, through Port Huron, Michigan. At the time of my return I was in the sleeper of the truck as another employee drove the truck. No INS officials questioned me nor did I make any false representation in order to return to the United States.

At the time of my departure from the United States, the sole purpose of my absence was to deliver produce to Canada for my employer.

I declare, under the penalty of perjury, that the above facts are true and correct. I executed this on the 22nd day of December, 1987, in Fresno, California.

/s/ Pedro Wall

PEDRO WALL
PETER WALL
PETE WALL

DECLARATION OF CECILIO VENEGAS

I, Cecilio Venegas, depose and say that:

1. I am a citizen of Mexico, born on 11-2-1957 in Tapatitlan Jalisco.

2. Presently I reside at 9305 SE Harold #12 Portland, Or. 97266. I have resided in the U.S. in an unlawful status since on or about 2-1978.

3. My initial entry was through the Tijuana California border without inspection. I subsequently reentered the U.S. with a passport and a valid tourist visa (B-2) on 4-27-79 and 9-17-80. Neither absence was for more than 30 days.

4. I have two brothers and three sisters who live in Portland Or. I currently live in Portland. I have two children, both born in the U.S. Cecilia Venegas 8-10-84 and Lubianka Venegas 12-14-87. The mother is Virginia Alonso.

5. I have no criminal convictions and I have not received public assistance.

6. I have no departures from the U.S. totaling more than 180 days since initial entry on 2-78, no absence was for more than 45 days durtion.

7. I learned on or about 6-24-87 that my mother was very ill, possibly dying. I learned this by phone from my sister. On 6-24-87 I went to the Legalization Office in Portland Or. to get permission to be at my mother's side.

8. I was told that I would need a letter from a doctor in Mexico which would state her condition. I was told that a telephone call would not suffice.

9. I was desparate that I might not see my mother before she died. The last time I had seen my mother was on or about 1-85 in Portland. I have always felt very close to my mother. I felt that I could not wait for the letter from the doctor. I saw at least a two weeks delay. I left

without permission on 6-25-87. I gave no thought as to how I would return or to the consequences of my action.

10. I visited my mother for no more than 30 days. (Exhibit 1 shows her condition as examined by her doctor)

11. I returned on or about 7-25-87 without inspection through Nogales-Arizona.

12. I applied on 12-22-87 for Status as a Temporary Resident. (Exhibit 2-Copy of application)

13. On January 6, 1988 I received a letter of denial from the Legalization Office in Portland Or. The reason for the denial is that I was absent without permission from I.N.S. after 5-1-87. My file number is A-91-374-072.

14. I will be unable to get a job without the Temporary Status, I will be unable to support my children and be a father to them. If deported I would have great difficulty finding a job in Mexico. Most of my family is in the U.S., in Portland Or. I came to the U.S. when I was 19 years old. There are roots here which would have to be torn out. (Exhibit 3-Denial letter)

I declare under the penalty of perjury that the above facts are true and correct.

Executed this day 1-9-88 in the city of Portland Or.

/s/ Cecilio Venegas

CECILIO VENEGAS

DECLARATION OF ENRIQUE ALMARAZ

I, ENRIQUE ALMARAZ, depose and say:

1. I am a national of Mexico. I was born May 4, 1958, in El Platanar, Jalisco, Mexico.

2. I have unlawfully resided in the United States since February, 1977. The information I provided in the application for status as a Temporary Resident, form I-687, attached hereto as Exhibit "1", is true and correct.

3. I have one United States Citizen child, age 6½, who lives with me.

4. I believe and have been advised by legal counsel that I qualify for legalization under the Immigration Reform and Control Act of 1986, other than that the Immigration and Naturalization Service considers me to be ineligible based upon an absence from the country and return without inspection after May 1, 1987.

5. I had to go to Jalisco, Mexico because I received a letter from a Dr. Torres Ruvalcaba, notifying me of my father Francisco Almaraz Hernandez' rapidly deteriorating health. The letter was dated June 18, 1987 but I did not receive it until on or about July 2, 1987. A copy of said letter is attached hereto as Exhibit "2".

6. I had not seen my father for approximately 5½ years. On or about July 3, 1987, my sister Antonia Almaraz received a phone call from our family in Jalisco. They told her that my father was dying and wanted to see me right away.

7. I left for Jalisco, Mexico on or about July 4, 1987. I was able to see my father who had been released from the hospital. When I saw him, however, I realized that he was seriously ill and I had him readmitted to the hospital. About one month later, I reentered the United States without inspection.

8. My father died on August 16, 1987. A copy of his death certificate is attached as Exhibit "3".

9. My purpose in visiting Mexico was not to engage in any illegal or immoral conduct not did I engage in any such conduct.

10. I did not intend to terminate my right to legalization, nor did I intend to abandon my residence in the United States.

11. I did not understand that my brief departure to Mexico and return to the United States after May 1, 1987 would terminate my right to legalization.

12. If I am not granted legalization pursuant to INA Section 245A, I will be subject to deportation if apprehended and will not be able to find employment in the United States in order to support myself and my United States Citizen son.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 13th day of January, 1988, in the City and County of Los Angeles.

/s/ Enrique Almaraz
ENRIQUE ALMARAZ

DECLARATION

I, Marshall G. Whitehead, depose and declare under oath as follows:

1. I am a practicing attorney in Phoenix, Arizona and am in good standing with the Arizona State Bar. I specialize in Immigration Law and am familiar with the provisions of the Immigration Reform and Control Act of 1986. I have prepared some 300 legalization cases since April of 1986.

2. My first contact with the Noriega family was in June of 1987 when Carmen Araujo came to me to request my assistance in applying for legalization. This declaration involves the case of *Maria Del Carmen Velarde De Noriega,* a Mexican national, age 56, the mother of Carmen and Gloria Noriega. Gloria Noriega, another daughter, came to me in July of 1987 to also apply for her legalization. At that time, it was mentioned to me that other members of the family wanted to apply for legalization, such as the mother, Maria Del Carmen De Noriega, and a son. Information was gathered about the other family members at that time but the applications were not prepared then due to lack of funds to pay for fees and costs.

3. Mrs. Maria Noriega first entered the United States in August, 1980 with a Border Crossing Card. She subsequently overstayed her visit and has continued to reside in the United States in an unlawful status since that time. Based upon the information provided me by her daughters Carmen and Gloria in June and July of 1987, it appeared that Maria Noriega was prima facie eligible for legalization.

4. Since her entry, Mrs. Noriega has returned to Mexico annually to visit her parents. Her stay never exceeded 3 days. In early August of 1987 Mrs. Noriega returned to Mexico for a brief, casual and innocent departure to obtain birth certificates for her children who were in need of that document in order to apply for legalization. She re-entered the United States with another Border Crossing Card on August 19, 1987 and given a conditional permit to remain until August 26, 1987.

5. Mrs. Noriega and her daughters Carmen and Gloria advised this affiant that on November 24, 1987 at 8:45 a.m. two Border Patrol Agents appeared at the Noriega residence in Phoenix, Arizona. They questioned Maria Noriega as to her immigration status and she was then informed she was illegally in this country and they proceeded to detain her. She was taken to the federal building in Phoenix and was questioned by Immigration or Border Patrol Officials. Mrs. Noriega and her daughters (who were with her) claimed she was eligible for amnesty and were in the process of applying for it. It was at that juncture that Mrs. Noriega was told she was not eligible for legalization due to her re-entry with a Border Crossing Card after May 1, 1987. She was then advised by these officials that if she insisted on a hearing in front of a judge there would be a high bond placed on her and she would stay in jail indefinitely until the bond ws paid.

6. After having been advised by the officials that she was not eligible for legalization and that she would be held in jail on a high bond, Mrs. Noriega signed a form I-274 requesting a voluntary return to Mexico. At that point, Mrs. Noriega was expelled to Mexico. Mrs. Noriega remains in Mexico as of this date believing that her re-entry into this country would make her ineligible for legalization.

7. Based upon the above facts, this Affiant believes the officials acted improperly in denying Mrs. Noriega an

opportunity to apply for legalization and in expelling her to Mexico and thus violated the provisions of the Immigration Reform and Control Act.

Further Affiant Sayeth Naught.

Dated: January 14, 1988

Signed: Marshall G. Whitehead
MARSHALL G. WHITEHEAD

Subscribed and sworn to before me by the above-named affiant at 3030 N. 3rd Street, Suite 960 Phoenix, Arizona this 14th day of January 1988

My commission expires: Oct. 7, 1991

/s/ Isidia Mārttinez
ISIDIA MARTINEZ
Notary Public

DECLARATION OF JUAN ANSELMO TORRES-RIVAS

I, Juan Anselmo Torres-Rivas, depose and say:

1. I am and citizen and national of Mexico.

2. I have continuously resided in the United States in unlawful immigration status since approximately November, 1980.

3. I reside at 2209 Ross, Laredo, Texas.

4. I have not received public assistance for myself while residing in the United States.

5. I have no criminal record.

6. Between November 6, 1986 and March 15, 1987, I was absent from the United States more than 180 days in total nor more than 45 days for any single absence.

7. On or about March 15, 1987, I was taken into custody in Laredo, Texas by the Immigration and Naturalization Service. I was taken to the U.S. Border Patrol station in Laredo, Texas, made to sign a form, and on the same day I was taken to the International Bridge, and told to leave the United States. The INS then made me walk across the bridge into Nuevo Laredo, Tamaulipas, Mexico.

8. At no time during my detention did the INS or U.S. Border Patrol agents advise me orally in writing about my right to legalization.

They did not even question me about my length of residence in the United States. They gave me no opportunity to explain my situation. They just told me that I was illegally in the United States and that I had to sign the Voluntary Departure form.

I signed the form because I thought I had no option. I was unaware of my legalization rights and no one explained them to me.

9. I returned to the United States without inspection on March 17, 1987.

10. I have been advised by a non-profit organization which assists legalization applicants that as a result of my improper expulsion, followed by my unknowing failure to file a legalization aplication by June 3, 1987, makes me ineligible for legalization under Sec. 245a.2.(a)(2)(i) of INS's final legalization regulations.

At no time during my improper detention and expulsion was I ever advised in any way regarding the June 3, 1987 deadline, by the INS or through any publicity.

I declare under penalty of perjury that the above facts are true and correct.

Executed this 13th day of January 1988 in the city of Laredo, Texas.

/s/ Juan Anselmo Torres-Rivas
JUAN ANSELMO TORRES-RIVAS

TELEGRAPHIC MESSAGE

IMMIGRATION AND NATURALIZATION SERVICE,
CENTRAL OFFICE
WASHINGTON, D.C.

PRIORITY UNCLASSIFIED

Accounting Classification – 5211

Date – NOVEMBER 14, 1986

No. CO 1588-P (WIRE #1)

For Information Call
AARON BODIN – 633-3240

MESSAGE TO BE TRANSMITTED

To: ALL REGIONAL COMMISSIONERS
ALL REGIONAL LEGALIZATION OFFICERS
ALL DISTRICT DIRECTORS
ALL CHIEF PATROL AGENTS
ALL OFFICERS IN CHARGE
COTF GLYNCO

THE PRESIDENT SIGNED INTO LAW THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 ON NOVEMBER 6. THE NEW LAW ALTERS SUBSTANTIALLY THE SERVICE'S OPERATIONAL PROCEDURES AND RESOURCE LEVELS. HOWEVER, IT IS OF CRITICAL IMPORTANCE THAT THE CHANGES REQUIRED TO RUN EMPLOYER SANCTIONS, LEGALIZATION AND SPECIAL AGRICULTURAL WORKER (SAW) PROVISIONS OCCUR SMOOTHLY WITH MINIMAL ADVERSE IMPACT ON EXISTING PROGRAMS. EXCEPT AS NOTED BELOW, OPERATIONS ARE TO CONTINUE

IN NORMAL FASHION. THESE GUIDELINES ARE TO BE IMPLEMENTED ON AN INTERIM BASIS, AND WILL BE FINALIZED AFTER CONSULTATION WITH REGIONAL AND FIELD OFFICES. COMMENTS FROM REGIONS, DISTRICT DIRECTORS AND CHIEF PATROL AGENTS SHOULD BE SUBMITTED TO CODEP BY NOVEMBER 29, 1986. ALTHOUGH IT IS EXPECTED THAT THE NUMBER OF ALIENS TO WHICH THE SERVICE WILL NEED TO GIVE SPECIAL CONSIDERATION DURING THE NEXT SIX MONTHS WILL NOT BE LARGE, THESE GUIDELINES WILL ESTABLISH AN ORDERLY TRANSITION DURING THIS PERIOD AND ENSURE THAT ALIENS ELIGIBLE FOR SPECIAL BENEFITS ARE GIVEN PROPER DOCUMENTATION:

1. BORDER OPERATIONS, BOTH AT AND BETWEEN PORTS OF ENTRY, ARE TO CONTINUE IN ACCORDANCE WITH PRESENT PRIORITIES:-IN THESE LOCATIONS IT WILL BE BUSINESS AS USUAL.

2. ALIENS APPREHENDED IN THE INTERIOR OF THE UNITED STATES ARE TO BE QUESTIONED TO DETERMINE WHETHER OR NOT THEY FIT CRITERIA WHICH MAKE THEM ELIGIBLE FOR LEGALIZATION OR "SAW" STATUS. THOSE WHO APPEAR TO QUALIFY ARE TO BE DOCUMENTED AS OUTLINED BELOW; ALIENS WHO ARE CLEARLY INELIGIBLE (CRIMINAL ALIENS AND THOSE WHO ENTERED THE UNITED STATES AFTER JANUARY 1, 1982, AND THOSE WHO ARE NOT ELIGIBLE FOR "SAW" STATUS) ARE TO BE PROCESSED FOR DEPORTATION.

3. ALIENS WHO WALK IN TO SERVICE OFFICES CLAIMING ELIGIBILITY FOR LEGALIZATION OR "SAW" STATUS AND REQUESTING WORK AUTHORIZATION ARE TO BE ADVISED TO WAIT UNTIL THEIR APPLICATIONS CAN BE HANDLED AT A LEGALIZATION OFFICE.

4. EXISTING EMPLOYER COOPERATION PROGRAMS ARE TO REMAIN IN EFFECT.

* * * * *

SOUTHERN REGION SERVICE CENTER
U.S. IMMIGRATION AND NATURALIZATION SERVICE
311 NORTH STEMMONS FREEWAY
DALLAS, TX 75207

SPOUSES AND CHILDREN OF ALIENS PROTECTED BY SECTION 210 (SMALL D) (1) OR SECTION 245A (SMALL E) WHO ARE IN THE UNITED STATES ON OR BEFORE THE DAY OF ENACTMENT AND WHO DO NOT QUALIFY IN THEIR OWN RIGHT FOR SPECIAL AGRICULTURE WORK OR LEGALIZATION STATUS SHALL BE GIVEN VOLUNTARY DEPARTURE OR A STAY OF DEPORTATION TO COINCIDE WITH THE PRINCIPAL ALIEN'S EMPLOYMENT AUTHORIZATION EXPIRATION DATE.

ALIENS WHOSE ENTRY DATE IS SUBSEQUENT TO ENACTMENT OR WHO APPLY FOR ENTRY BEFORE THE APPLICATION PERIOD, OR WHOSE CLAIM TO ELIGIBILITY IS PATENTLY FRIVOLOUS WILL NOT BE GRANTED EMPLOYMENT AUTHORIZATION. THEY WILL BE PLACED IN DEPORTATION OR EXCLUSION PROCEEDINGS AS APPRO-

PRIATE. PRIOR TO REMOVAL OF ANY ALIEN WHOSE STATUS UNDER THE NEW LAW IS QUESTIONABLE, THE OFFICER SHOULD CONSULT WITH HIS OR HER APPROPRIATE SUPERVISOR AND THE DISTRICT COUNSEL.

AN ALIEN WHO MAKES AN UNAUTHORIZED DEPARTURE AND ILLEGAL REENTRY AFTER ENACTMENT SHALL BE CONSIDERED TO HAVE BROKEN HIS PERIOD OF CONTINUOUS PHYSICAL PRESENCE AND THUS WILL BE INELIGIBLE FOR LEGALIZATION UNDER SECTION 245A. THEREFORE THE FOLLOWING

* * * * *

INS Legalization Manual

(Officially titled: "Procedures Manual for the Legalization and Special Agricultural Worker Programs of the Immigration Reform and Control Act of 1986")

Reprinted from Master Copy Provided by
the United States Immigration and Naturalization Service

[SEAL]

American Immigration Lawyers Association
1000 16th Street, NW • Suite 604 • Washington, DC 20036

D. Fingerprint chart (FD-258);

E. Documentation to support eligibility; and that

F. The application itself is completely filled out and signed by applicant.

Minor correctable deficiencies such as incomplete responses or typographical errors may be corrected by the LA and the applicant referred to the fee clerk for further processing. If there are major deficiencies in the application package or if the applicant is statutorily ineligible, the application will be rejected by the LA. In the case of incomplete applications, the applicant is to be instructed as to what is required to complete the application package and may be advised to seek assistance from a local designated entity. The alien shall be instructed to return to the LO after the noted deficiencies have been corrected. LAs maintain a count of the number of applicants who depart the LO without filing subsequent to the screening of their applications. If an applicant whose application has been rejected by the LA insists on filing, the application will be routed through a fee clerk to an adjudicator with a routing slip from the LA stating the noted deficiency(ies).

4. *Applications Prepared by a Qualified Designated Entity*

When an alien indicates that assistance from a QDE was received in the preparation of the application, the receptionist will make a preliminary

PLAINTIFFS' EXHIBIT NNNN

TELEGRAPHIC MESSAGE

IMMIGRATION AND NATURALIZATION SERVICE,
CENTRAL OFFICE
WASHINGTON, D.C.

PRIORITY UNCLASSIFIED

Accounting Classification – 5211

Date Prepared –

File – CO 1588-P

For Information Call
AARON BODIN – 633-5311

MESSAGE TO BE TRANSMITTED

To: ALL REGIONAL COMMISSIONERS
ALL REGIONAL LEGALIZATION OFFICERS
ALL DISTRICT DIRECTORS
ALL OFFICERS IN CHARGE
ALL CHIEF PATROL AGENTS
COTF GLYNCO

LEGALIZATION WIRE NO. 9

THE FOLLOWING GUIDELINES AND DEFINITIONS ARE PROVIDED IN RESPONSE TO QUESTIONS AND REQUESTS FOR GUIDANCE FOLLOWING THE WIRE OF NOVEMBER 14, 1986 RELATING TO REFORM ACT IMPLEMENTATION, HEREAFTER REFERRED TO AS LEGALIZATION WIRE NO. 1. THESE GUIDELINES ARE TO BE USED IN DETERMINING WHETHER ALIENS HAVE ESTABLISHED PRIMA FACIE ELIGIBILITY FOR LEGALI-

ZATION AS THAT TERM IS USED IN NEW SECTION 245A OR A NONFRIVOLOUS CLAIM TO SPECIAL AGRICULTURAL WORKER (SAW) ELIGIBILITY AS THAT TERM IS USED IN NEW SECTION 210. THE DETERMINATION OF WHETHER AN ALIEN PRESENTS A PRIMA FACIE CASE FOR LEGALIZATION OR MAKES A NONFRIVOLOUS CLAIM TO SAW ELIGIBILITY MUST BE MADE ON A CASE-BY-CASE BASIS.

1. *NONFRIVOLOUS CLAIM TO SAW ELIGIBILITY.* SECTION 210 (SMALL D) PROVIDES THAT APPREHENDED ALIENS WHO ESTABLISH A NONFRIVOLOUS CLAIM TO SAW ELIGIBILITY CANNOT BE EXCLUDED OR DEPORTED. GUIDANCE HAS BEEN SOUGHT WITH RESPECT TO WHAT CONSTITUTES A NONFRIVOLOUS CLAIM TO ELIGIBILITY AS A SPECIAL AGRICULTURAL WORKER.

THE HOUSE-SENATE MANAGERS' REPORT ON THIS SECTION STATES THEIR INTENTION THAT THE SERVICE DO NO MORE THAN SECURE THE ALIEN'S ATTESTATION UNDER PENALTY OF PERJURY TO BASIC FACTS CONCERNING THE ALIEN'S EMPLOYMENT AND THE TYPE OF DOCUMENTATION THE ALIEN INTENDS TO PRODUCE DURING THE APPLICATION PERIOD TO SUPPORT HIS/HER CLAIM. LEGALIZATION WIRE NO. 1 SET FORTH THE INFORMATION TO BE OBTAINED IN SUPPORT OF AN ALIEN'S CLAIM TO ELIGIBILITY. IT IS NOT NECESSARY FOR THE ALIEN TO PROVIDE WITH CERTAINTY AND SPECIFICITY EVERY ITEM OF INFORMATION RELATING TO HIS/HER CLAIM. HOWEVER, THE FOLLOWING ARE MINIMUM REQUIREMENTS:

(1) AT LEAST 90 DAYS OF QUALIFYING EMPLOYMENT MUST BE CLAIMED;

(2) SPECIFIC AND PLAUSIBLE INFORMATION WITH RESPECT TO THE WORK ACTIVITY AND CROP FOR ALL QUALIFYING EMPLOYMENT MUST BE PROVIDED;

(3) THE ALIEN SHOULD IDENTIFY THE TYPE AND NATURE OF THE DOCUMENTATION HE/SHE INTENDS TO PRODUCE DURING THE APPLICATION PERIOD TO VERIFY THE CLAIMED EMPLOYMENT;

(4) REGARDLESS OF ANY SHOWING CONCERNING AGRICULTURAL EMPLOYMENT UNDER THESE GUIDELINES, ALIENS WHO INDICATE THAT THEY ARE EXCLUDABLE UNDER SECTIONS 212 (SMALL A) (9), (10), (23) EXCEPT AS IT RELATES TO A SINGLE OFFENSE OF SIMPLE POSSESSION OF 30 GRAMS OR LESS OF MARIJUANA, (27), (28), (29) AND (33) CANNOT ESTABLISH A NONFRIVOLOUS CLAIM TO SAW ELIGIBILITY;

THE INFORMATION PROVIDED MUST BE ACCEPTED AS TRUE ON ITS FACE UNLESS THE OFFICER HAS CONTRARY INFORMATION. IF THE CLAIM IS DENIED THE OFFICER MUST STATE THE BASIS OF THE DENIAL ON FORM I-213.

A SPECIAL AFFIDAVIT FORM HAS BEEN DEVELOPED AND WILL BE AVAILABLE FOR USE IN THE NEAR FUTURE. UNTIL THEN CONTINUE TO USE AFFIDAVIT FORMS I-215B OR I-215W.

FOLLOW THE PROCEDURES DESCRIBED IN LEGALIZATION WIRE NO. 1 AND ADVISE ALIENS

WHO HAVE ESTABLISHED A NONFRIVOLOUS CLAIM TO ELIGIBILITY THAT THEY MUST SUBMIT AN APPLICATION FOR SAW STATUS BETWEEN JUNE 1 AND JUNE 30, 1987.

2. *OTHER PERISHABLE COMMODITIES.* THE FOLLOWING INTERIM DEFINITION OF THE TERM "OTHER PERISHABLE COMMODITIES" AS USED IN SECTION 210 (SMALL H) IS PROVIDED FOR USE IN DETERMINING NONFRIVOLOUS CLAIMS TO SAW ELIGIBILITY. THIS DEFINITION IS SUBJECT TO CHANGE BY DEPARTMENT OF AGRICULTURE RULEMAKING PURSUANT TO SECTION 210 (SMALL H) BUT IS TO BE USED IN THE INTERIM. THIS DEFINITION IS DERIVED FROM THE LANGUAGE OF SECTION 210 (SMALL H) AND IS INTENDED TO EXCLUDE FROM CLASSIFICATION AS PERISHABLE COMMODITIES THOSE PRODUCTS WHICH ARE NOT PRODUCED BY THE TYPES OF LABOR LISTED IN SECTION 210 (SMALL H) WHICH REFERS TO ". . . FIELD WORK RELATED TO PLANTING, CULTURAL PRACTICES, CULTIVATING, GROWING AND HARVESTING OF FRUITS AND VEGETABLES OF EVERY KIND AND OTHER PERISHABLE COMMODITIES. . . ." THIS LANGUAGE INDICATES STRONGLY THAT ONLY PLANT PRODUCTS ARE CONTEMPLATED TO THE EXCLUSION OF LIVESTOCK AND RELATED PRODUCTS, WOOD, AND PROCESSED PRODUCTS. THE INTERIM DEFINITION IS AS FOLLOWS: "THE TERM 'OTHER PERISHABLE COMMODITIES' MEANS PLANT PRODUCTS WHICH REQUIRE PLANTING, CULTURAL PRACTICES, CULTIVATING, GROWING AND HARVESTING BY AGRICULTURAL FIELD WORKERS. LIVESTOCK, MEAT AND

MEAT PRODUCTS, DAIRY PRODUCTS, POULTRY AND EGGS, WOOD, AND PROCESSED PRODUCTS ARE NOT PERISHABLE COMMODITIES FOR THE PURPOSES OF DETERMINING A NONFRIVOLOUS CLAIM TO ELIGIBILITY UNDER SECTION 210 (SMALL D)."

3. *PRIMA FACIE ELIGIBILITY FOR LEGALIZATION.* UNDER SECTION 245A (SMALL E) ALIENS WHO ARE APPREHENDED OR IN CUSTODY DURING THE PRE-APPLICATION PERIOD WHO ESTABLISH PRIMA FACIE ELIGIBILITY FOR LEGALIZATION MAY NOT BE DEPORTED. PRIMA FACIE ELIGIBILITY IS ESTABLISHED IF AN ALIEN STATES UNDER PENALTY OF PERJURY THAT HE MEETS THE ELIGIBILITY CRITERIA FOR LEGALIZATION AND THAT HE IS NOT EXCLUDABLE UNDER PARAGRAPHS (9), (10), (15), (23) EXCEPT AS IT RELATES TO A SINGLE OFFENSE OF SIMPLE POSSESSION OF 30 GRAMS OR LESS OF MARIJUANA, (27), (28), (29), and (33) OF SECTION 212. THE ALIEN MUST PROVIDE FACTS AND INFORMATION SUFFICIENT TO DEMONSTRATE ELIGIBILITY. THE INFORMATION PROVIDED MUST BE ACCEPTED AS TRUE ON ITS FACE UNLESS THE OFFICER HAS CONTRARY INFORMATION. IF THE CLAIM IS DENIED THE OFFICER MUST STATE THE BASIS OF THE DENIAL ON FORM I-213. FOR THE PURPOSES OF SECTION 245A AN ALIEN IS NOT EXCLUDABLE UNDER SECTION 212 (SMALL A) (15) IF HE DEMONSTRATES A HISTORY OF EMPLOYMENT IN THE UNITED STATES WHICH PROVIDED SELF-SUPPORT WITHOUT RELIANCE ON PUBLIC CASH ASSISTANCE. THE AFFIDAVIT PROCEDURE SET FORTH IN LEGALIZA-

TION WIRE NO. 1 IS TO BE EMPLOYED FOR THIS PURPOSE. A SPECIAL AFFIDAVIT FORM IS BEING DEVELOPED FOR THIS PURPOSE BUT FORMS I-215B OR I-215W MAY BE USED UNTIL THE NEW FORM IS AVAILABLE. ADVISE ALIENS WHO HAVE ESTABLISHED A PRIMA FACIE CASE FOR ELIGIBILITY THAT THEY MUST SUBMIT AN APPLICATION FOR LEGALIZATION BETWEEN MAY 5 AND JUNE 3, 1987.

4. *APPREHENSIONS AT ENTRY.* CLARIFICATION HAS BEEN REQUESTED CONCERNING THE DIFFERENCE IN MEANING BETWEEN THE TERMS "INTERIOR" AND "AT ENTRY" FOR THE PURPOSES OF REFORM ACT IMPLEMENTATION. THE NEED FOR CLARIFICATION ARISES FROM THE FACT THAT ALIENS WHO ARE IN THE UNITED STATES AND WHO ARE APPREHENDED BY THE SERVICE ARE ENTITLED, UNDER THE EXPRESS PROVISIONS OF THE REFORM ACT, TO ESTABLISH ELIGIBILITY FOR LEGALIZATION OR SAW STATUS AND TO AVOID EXCLUSION OR DEPORTATION ON THAT BASIS. ALIENS APPREHENDED AT ENTRY, HOWEVER, ARE INELIGIBLE TO APPLY FOR SAW STATUS IN THE UNITED STATES AND ARE INELIGIBLE TO APPLY FOR LEGALIZATION.

ALIENS APPREHENDED IN THE ACT OF EFFECTING AN ILLEGAL ENTRY OR ALIENS DENIED ADMISSION ARE THEREFORE INELIGIBLE TO APPLY FOR ANY SAW OR LEGALZIATION BENEFIT IN THE UNITED STATES. IN OTHER CASES, ALIENS ARE TO BE REGARDED AS HAVING BEEN APPREHENDED AT ENTRY WHERE THE APPREHENDING OFFICER HAS PROBABLE CAUSE TO BELIEVE

THAT THE INDIVIDUAL ENTERED WITHOUT INSPECTION AFTER NOVEMBER 6, 1986. APPREHENSIONS DETERMINED TO BE AT ENTRY BASED ON PROBABLE CAUSE CANNOT BE DEFINED IN TERMS OF DISTANCE FROM THE BORDER OR OTHER SET FACTORS. AN ALIEN FOUND CONCEALED IN A VEHICLE OR LOCATED IN A REMOTE BORDER AREA WOULD NORMALLY BE CONSIDERED A BORDER APPREHENSION REGARDLESS THAT HIS ACTUAL ENTRY WAS NOT WITNESSED. AN ALIEN FOUND IN EMPLOYMENT IN A BORDER CITY SUCH AS EL PASO OR DETROIT WOULD NORMALLY NOT BE CONSIDERED A BORDER APPREHENSION. THE RANGE OF POSSIBILITIES BETWEEN THESE EXAMPLES INCLUDES FACTS WHICH WOULD SUPPORT OR NOT SUPPORT A DETERMINATION BASED ON PROBABLE CAUSE THAT AN ARRESTED ALIEN HAS BEEN APPREHENDED AT ENTRY. IN EACH CASE THE DETERMINATION OF WHETHER AN ALIEN HAS BEEN APPREHENDED "AT ENTRY" OR "IN THE INTERIOR" MUST REST ON THE STATEMENT OF THE APPREHENDED ALIEN AND/OR THE JUDGMENT OF THE ARRESTING OFFICER AND HIS SUPERVISOR.

5. *SELECTIVE SERVICE REGISTRATION.* GUIDANCE HAS BEEN REQUESTED CONCERNING THE OBLIGATION OF ENFORCEMENT OFFICERS TO DETERMINE WHETHER OR NOT APPREHENDED ALIENS WHO ARE PROSPECTIVE LEGALIZATION OR SAW APPLICANTS HAVE REGISTERED WITH SELECTIVE SERVICE. ALIENS APPREHENDED DURING THE PRE-APPLICATION PERIOD DO NOT HAVE TO COMPLY WITH SELECTIVE SERVICE

REGISTRATION REQUIREMENTS. SELECTIVE SERVICE REGISTRATION PROCEDURES AND INFORMATION WILL BE INCORPORATED IN THE FORMAL APPLICATION PROCESS.

6. *CRIMINAL EXCLUDABILITY UNDER SECTION 210.* GUIDANCE HAS BEEN REQUESTED CONCERNING CRIMINAL EXCLUDABILITY UNDER SECTION 210. SECTION 245A CONTAINS SPECIFIC LANGUAGE CONCERNING THE EFFECT OF MISDEMEANOR AND FELONY CONVICTIONS ON LEGALIZATION ELIGIBILITY. SECTION 210 DOES NOT CONTAIN PARALLEL LANGUAGE. HOWEVER, ALIENS CLAIMING SAW ELIGIBILITY ARE EXCLUDABLE UNDER SECTIONS 212 (SMALL A) (9), (10), (23) EXCEPT FOR A SINGLE OFFENSE OF SIMPLE POSSESSION OF 30 GRAMS OF MARIJUANA, (27), (28), (29), AND (33) AND ARE INELIGIBLE FOR SAW STATUS. NO WAIVER OF THESE GROUNDS OF EXCLUDABILITY IS AVAILABLE TO SAW APPLICANTS.

/s/ Alan C. Nelson
ALAN C. NELSON
Commissioner

[12/24/86]

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LEGALIZATION LOG

DECLARATION OF GEORGE INDELICATO

I, George Indelicato, declare as follows:

1. I am the director and General Counsel of the Catholic Charities of Los Angeles, Inc. I am formerly an Immigration Judge and held that position for six years before recently retiring from the government. Catholic Charities of Los Angeles is affiliated with the Catholic Archdiocese of Los Angeles. It is a non-profit private social services agency which provides a broad range of services designed to help the disadvantaged enter the mainstream of the community life and to bring comfort and assistance to those who are in need.

2. Our agency is very involved in the implementation of the legalization provisions of the Immigration Reform and Control Act of 1986. Since the beginning the legalization program, in May 1987, our agency has assisted over 17,000 applicants. We anticipate assisting between 30,000 and 40,000 applicants before the legalization application period ends in May 1988.

3. We believe that we are the agency processing the largest number of applicants for legalization in the State of California, and possibly in the country. We are designated as a Qualified Designated Agency by the Immigration and Naturalization Service to assist legalization applicants prepare their applications.

4. The final INS regulations published in May 1987 implementing the legalization provisions of the Immigration Reform and Control Act of 1986 made ineligible aliens who had briefly departed the country and returned improperly using non-immigrant visas. This policy was only changed on or about October 10, 1987.

5. Because of the original policy, during the first few months of the application period, we discouraged potential applicants from filing applications if they were con-

sidered ineligible under the regulations then in effect because of brief departures followed by reentries using non-immigrant visas.

6. Based on my experience dealing with the legalization program, and my many contacts with other directors of agencies assisting applicants, I believe that thousands, if not tens of thousands, of potential applicants for legalization who qualify for the benefit do not know that INS has now changed its policy regarding reentries affected with non-immigrant visas during the required period of unlawful status.

7. In my judgment, unless INS is required to engage in a multi-lingual publicity effort to advise these aliens of the change in policy, thousands will never learn about the change and will not apply for legalization before the end of the application period.

8. The vast majority of people who qualify for legalization cannot afford an attorney and prepare their own applications. According to the INS, the great majority are also not receiving assistance from non-profit groups or the Qualified Designated Agencies. Our agency does not have the resources to engage in a publicity campaign, and, while we are processing thousands of applicants, we have no contact at all with the great majority of potential applicants.

9. To my knowledge, the INS has taken no steps to publicize this change in policy. Churches and community organizations simply do not have the resources to do extensive outreach to inform these persons of their eligibility for legalization.

10. In addition to publicity about the change in policy, I believe that eligible aliens will not all have the opportunity to apply for legalization before the end of the application period. I therefore believe that at least for those aliens

who previously were left to believe that they were ineligible for legalization, the application period should be extended so that they have a full twelve month period to apply. Given our backlogs at Catholic Charities, this is certainly the only way that we could assist these aliens completing their legalization applications.

11. I believe that the policy originally stated by the INS in its final regulations, deeming ineligible for legalization aliens who had departed the United States and returned improperly using non-immigrant visas, was unlawful.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of October, 1987, in Los Angeles, California.

/s/ George Indelicato

GEORGE INDELICATO

DECLARATION

I, Marc Van Der Hout do hereby declare:

1. I am an attorney at law licensed to practice in the state of California, and have been practicing immigration law for close to ten years.

2. Over the past ten years, I would estimate that I have represented several thousand individuals in proceedings before the Immigration and Naturalization Service, the Immigration Courts, the Board of Immigration Appeals, the United States District Courts, and the United States Federal Courts of Appeals.

3. I am currently an adjunct professor teaching immigration law at Hastings College of the Law, and last year taught at Boalt Hall School of Law. I am past chair of the National Immigration Project of the National Lawyers Guild, past co-chair of the Litigation Training Committee of the American Immigration Lawyers Association, and currently acting as chair of the liaison committee to the Executive Office for Immigration Review of that association. I have lectured extensively throughout the United States on many aspects of immigration law, and have authored or co-authored many publications and articles on immigration law. Attached to this declaration is my curriculum vitae.

4. It has been the practice of the San Francisco District legalization office to deny individuals the right to file an application for legalization under the Immigration Reform and Control Act of 1986 if the individual had been in unlawful status prior to January 1, 1982, departed the United States post January 1, 1982, and re-entered on a non-immigrant visa.

5. I know this because in August of this year I was at the San Francisco legalization office when an individual came in seeking to apply for legalization. She was met at the reception desk by a clerk and when she explained the

facts of her case, as outlned above, she was told that she did not qualify for legalization and could not file. The clerk told her this after departing the front of the office and going to the back and speaking with her supervisor. I personally witnessed this.

6. It is my experience, having spoken publicly to many groups over the past several months about the Immigration Reform and Control Act of 1986 and having spoken to many individuals seeking to apply for legalization, that there are many persons who are in the exact situation as described above, who had been advised that they were ineligible to apply for legalization.

7. Suesequent to the change in INS policy on October 8, 1987, I have seen no attempts by the Immigration & Naturalization Service in the San Francisco Bay Area to inform the public of the change in the policy and to attempt to advise people in the public so that they would know that they are now eligible to apply.

8. Such an educational program would be essential to correct the misinformation that has been given out in the past and to properly advise individuals in this area who may qualify. It is my opinion, having practiced immigration law for close to ten years and being intimately familiar with the immigrant community, that there are many, many individuals who would now be eligible for legalization but who have no knowledge that they may now apply due to having been previously informed, either personally, by word of mouth, or by INS prior statements, that they are not eligible to apply.

I declare under penalty of perjury that the foregoing is true and correct, executed on the 29th day of October, 1987, at San Francisco, CA.

Signed: Marc Van Der Hout

MARC VAN DER HOUT

I, Isabel Garcia Gallegos, an attorney duly authorized by and in good standing with the State Bar of Arizona hereby depose and declare the following:

1. I am involved in the direct delivery of services to individuals who qualify under the legalization provisions of the Immigration Reform and Control Act of 1986.

2. As the chairperson of TECLA (Tucson Ecumerical Council Legal Assistance for Central Americans), and coordinator of both the Southern Arizona Coalition on Immigration and the Arizona Coalition for Immigrant and Refugee Rights, I am directly involved in the monitoring and reviewing of the legalization process of these organizations.

3. These organizations deliver services to all Southern Arizona which includes Tucson Arizona.

4. I have been involved since the inception of the legalization program in May 1987.

5. I am aware of the policy change announced by INS Commissioner Alan Nelson on October 8, 1987, regarding the previous ineligibility of persons who entered the United States after January 1, 1982, with an I-94 permit.

6. Prior to this change, the legalization offices in Southern Arizona had rejected, and otherwise, discouraged individuals who had, in fact entered the United States with an I-94 after January 1, 1982;

7. After the announcement made by Commissioner Nelson on October 8, 1987, neither the INS nor the legalization offices have informed the general public of the change nor an explanation other than what was reported in the English printed mediums of communication.

8. As a result, the undocumented community is not aware of the change nor its significance.

9. As a further result, many individuals who would qualify believe that they do not qualify.

10. The aforementioned organizations are non-profit and already are working beyond their limited resources.

11. As a consequence, these organizations can reach very few of those who are affected by this change.

12. Based on my experience, the only way to reach the affected population would be for the INS or the legalization offices to launch a multi-lingual campaign to educate and inform.

13. Furthermore, the application period would have to be extended an additional six (6) months so that the educational campaign can bring forth those affected so that they may be assisted in their applications;

14. The requirement of a filing of a waiver should be eliminated, as the costs of legalization have already showed to be extremely high for many individuals;

15. The waiver requirement does not serve any purpose as intended by Congress.

I declare the above upon my information and belief, and under penalty of perjury.

/s/ Isabel Garcia Gallegos
ISABEL GARCIA GALLEGOS

Subscribed and Sworn to before me this 29th day of October, 1987, by Isabel Garcia Gallegos.

My commission expires: 3/1/91

./s/ Mary Colette Shouron
MARY COLETTE SHOURON

October 26, 1987

I, Pilar Cuen depose and say that I am Legalization Counselor for Centro de Asuntos Migratorios which is a non-profit organization specializing in the delivery of immigration services in Chula Vista, CA USA.

Centro de Asuntos Migratorios is heavily involved in assisting aliens to apply for legalization pursuant to section 45 A (a) of the Immigration Reform and Control Act of 1986 (IRCA). Since May 1987 to the present we have assisted many clients. Our agency anticipates serving many more clients before the end of the legalization application period.

Until approximately October 8, 1987 policy announcement made by Immigration and Naturalization Service (INS) Commissionr Alan C. Nelson, the INS held that immigrants who otherwise qualified for legalization, but who had left the United States between January 1, 1982 and November 6, 1986 and who had re-entered the United States with a non-immigrant visa were ineligible for legalization.

INS has refused applications for legalization because our clients entered after January 1, 1982 with a non-immigrant visa and an I-94 was issued at the time of re-entry.

Knowledge of this INS position quickly spread through the community which we serve, consequently, many persons thinking that they are ineligible for legalization have decided not to apply for this benefit.

Based upon my involvement in this service and my discussions with community leaders, I am aware that many undocumented persons who left after January 1, 1982 and returned with a non-immigrant visa believe that they do not qualify for legalization.

To my knowledge the INS has undertaken no effort to publicize their policy change in the affected communities. Unless a major publicity campaign is undertaken and unless this is carried out in the most expedient manner, thousands of undocumented persons will never know of the policy change and will not apply for legalization timely. The only way to reach this population at this late date in the legalization process will be through a multi-lingual publicity campaign similar to the employer sanctions campaign INS launched several months ago.

The resources of our agency and other non-profit organizations in engaged in the delivery of legalization services are already stretched to the limit. Therefore, neither the resources nor the personnel exist among these agencies to carry out the type of publicity required to reach all aliens affected by this policy change.

In my view, non-profits and private attorneys will have a tremendous difficulty in timely advising the great majority of affected persons of their possibility to qualify in view of the recent INS policy change. Additionally, most non-profits are operating at full capacity and a majority of agencies are experiencing appointment backlogs. Therefore non-profits and the private bar will not be able to adequately assist in this regard.

Based on all my experience in the delivery of legalization services, it is my opinion that the only way in which the community of potential applicants who previously thought to be ineligible for legalization can have a reasonable opportunity to apply will be for the application period to be extended for a six month period.

I declare under penalty of perjurfy that the above is true and correct to the best of my knowledge.

Executed at Chula Vista, CA on this 26 of October of 1987

/s/ Pilar Cuen

PILAR CUEN
Legalization Counselor

DECLARATION OF NADINE K. WETTSTEIN

I, Nadine K. Wettstein, under penalty of perjury, hereby declare as follows:

1. I am managing attorney of the Southern Arizona Legal Aid, Inc. Legalization Project. In that capacity, I am a legal resource for Qualified Designated Entities (QDEs), agencies helping people file their applications under the Immigration Reform and Control Act of 1986 (IRCA). I also am lead counsel in two class actions filed under IRCA, challenging the practices and policies of the Immigration and Naturalization Service (INS) in its implementation of IRCA.

2. In my capacity as legal resource for QDEs, I receive telephone inquiries every day from QDEs and other people helping persons apply under this law. Until the INS announced its new "I-94" policy on or about October 8, 1987, the INS position had been and consequently we were advising the QDEs that people who entered the United States after January 1, 1982 with an I-94 that they would not qualify for IRCA legalization unless the policy were changed. As a result, the QDEs would advise the clients not to file their applications and the QDEs would not prepare the applications or work on the files.

3. In addition, the QDEs have told me of cases where people applied at the Legalization Office and admitted in their applications that they had reentered with an I-94 after 1/1/82. Those applications were rejected by the LO.

4. I have personally heard of dozens of cases where people believed they were ineligible because they entered after 1/1/82 with an I-94. Based upon my experience and involvement in this issue, there are probably hundreds of such cases. Most of these people probably have not heard of this change in INS policy; undocumented people primarily obtain information through word of mouth or

possibly from local Spanish language media.

5. To date I have not heard or seen any publicity from the INS about this new policy. The only publicity was an article in the local (English language) newspaper the day following the announced change. Although the INS is aware of my work, no one has contacted me, either personally or through something in writing, to inform me about this policy or ask me to publicize it.

6. Neither the QDEs nor my program has enough resources to adequately reach the numbers of people who are under a misunderstanding that they do not qualify because of I-94 problems.

7. Some of the QDEs in Arizona are enormously backlogged. I fear they will be unable to adequately handle the added burdens created by the new policy. While I am delighted that the INS has changed its policy, it also is requiring waivers be filed in many situations. As a result, the QDEs' workload will multiply.

8. Based upon my experience, only an extension of the filing deadline for these applicants would assure that the people who can now apply but who were informed that they could not qualify can receive the benefits to which they are entitled.

Upon penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of October, 1987.

/s/ Nadine K. Wettstein
NADINE K. WETTSTEIN

AFFIDAVIT

STATE OF ARIZONA
County of Maricopa

I, Joanne T. Stark, being first duly sworn, depose and say:

1. My name is Joanne T. Stark.

2. I am a lawyer specializing in the practice of immigration law. I also serve as Vice Chair of the Arizona Chapter of the American Immigration Lawyers Association.

3. I work for Nancy-Jo Merritt and Associates, P.C.

4. As part of my practice, I assist undocumented aliens in making application for temporary legal residence pursuant to Section 245A and Section 210 of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986.

5. From May, 1987 – the present month, our firm has assisted approximately 200 such individuals. We anticipate a similar rate of representation during the remaining months of the application period.

6. Until the October 8, 1987 announcement made by Commissioner Nelson of the Immigration and Naturalization Service, the Service's policy was that aliens who otherwise qualified for legalization but who had left the United States between January 1, 1982 through the present and entered on a nonimmigrant visa documented by an I-94, were ineligible for legalization under Section 245A.

7. I am aware that the Service has discouraged application in the past by such people or has rejected applications made.

8. Knowledge of the Immigration and Naturalization Service's position concerning rejection of applicants whose immigration history contained I-94 entries during the rele-

vant period of time quickly spread throughout our community.

9. Many would be applicants for legalization, believing themselves to be ineligible, have decided not to apply for legalization.

10. Based upon my contacts within the local community. I believe that many aliens who, after having been living illegally in the United States since before 1982, left briefly and returned on short term nonimmigrant visas believe that they are not qualified for legalization.

11. The Immigration and Naturalization Service has not actively advertised its change in policy in our community.

12. Unless a major media campaign is undertaken, many undocumented aliens will not be made aware of this major policy change. The only way to reach these people will be through a multilingual publication campaign similar to that undertaken to educate the public concerning the employer sanctions provisions of the new Act.

13. Resources of private attorneys and nonprofit agencies in my community are limited. The application period currently ends in less than seven months. I believe that in order to reach the majority of the pool of potential applicants, the legaliztion application period should be extended for six months.

14. I further recommend that the requirement of a waiver not apply to applicants whose continuous illegal presence was interrupted by I-94s.

/s/ Joanne T. Stark
JOANNE T. STARK

Subscribed and sworn to before me this 29 day of October, 1987.
My commission expires: 10-31-89

/s/ Lynn I. Lane
LYNN I. LANE
Notary Public

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 87-4757-WDK (JRx)

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., PLAINTIFFS,

vs.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL., DEFENDANTS.

[FILED JUL 15, 1988]

FACTUAL AND PROCEDURAL BACKGROUND

On July 22, 1987, plaintiffs, consisting of ten organizations and six individuals, instituted this proposed class action for declaratory and injunctive relief against the Immigration and Naturalization Service (INS) and its Commissioner. Plaintiffs challenged recent INS regulations implementing the broad amnesty for illegal aliens passed by Congress in the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 8 U.S.C.A. § 1255a (West Supp. 1988) (IRCA). The time in which to apply for legalization was set by the INS pursuant to congressional authorization for the period between May 5, 1987 and May 4, 1988. *See* 8 C.F.R. § 245a.2(a)(1) (1988).

To qualify for legalization, a deportable alien must establish that he entered the United States before January

1, 1982 and that he has "resided continuously in the United States in an unlawful status since [January 1, 1982] and through the date the application is filed. . . ." 8 U.S.C.A. § 1255a(a)(2) (West Supp. 1988). Recognizing that illegal aliens would naturally maintain some contact with their legal domicile, Congress provided that certain brief departures from the United States between January 1, 1982 and November 6, 1986 would not break an alien's continuous unlawful residence. *See* 8 U.S.C.A. § 1255a(g)(2)(A). The maximum period of time an alien may be absent from the United States and still qualify for amnesty has been set at 45 days at any one time and 180 aggregate days between January 1, 1982 through the date the application for legalization is filed. 8 C.F.R. § 245a.1(c)(1)(i) (1988).

The INS regulation at issue originally provided that an alien's eligibility would not be affected by reentries into the United States subsequent to January 1, 1982 "that were not documented on Service Form I-94, Arrival-Departure Record." 8 C.F.R. § 245a.2(b)(8) (1988). In effect, the INS took the position that aliens who fraudulently procured a non-immigrant visa, INS Form I-94, or other forms of documentation, were not in this country unlawfully during the relevant time period. Thus, if an otherwise eligible alien reentered the United States subsequent to January 1, 1982 by means of such documentation, the INS would deny a stay of deportation, employment authorization, and legalization. Plaintiffs contested this position, arguing that aliens who reentered the United States using fraudulently procured documentation were indeed unlawfully residing in this country as contemplated by the statute.

Plaintiffs originally sought a declaration that the INS regulation was inconsistent with the provisions of IRCA and that it violated the equal protection clause because the regulation was not being applied to other similarly situated

aliens. In addition, they requested that further implementation of the regulation be temporarily and permanently enjoined. Finally, though not stated in their initial complaint, plaintiffs asked that one year legalization period contemplated by IRCA be extended six months to compensate for the time that the allegedly erroneous policy has been in effect and that the INS be ordered to formulate and implement, following court approval, an outreach program designed to inform aliens and interested organizations of the repeal of the regulation.

On October 8, 1987, INS Commissioner Alan Nelson announced a change in INS policy with respect to aliens who returned to the United States using a non-immigrant visa. At a hearing in which this Court was to address plaintiffs' motion for class certification and defendants' motion to dismiss, the parties discussed with the Court whether and to what extent the INS' action had rendered plaintiffs' complaint either moot or not ripe for review. The Court withheld further consideration of all issues presented in order to give the parties time to assess the new regulation and its implications.

Under the new regulation, aliens who (1) were otherwise eligible for legalization, (2) were present in the United States in an unlawful status prior to January 1, 1982, and (3) reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence, were eligible for legalization, provided they applied for and received a waiver of exclusion. *See* 8 C.F.R. §§ 245a.2(b)(9) and (b)(10) (1988).[1] The regulation was

[1] In order to be eligible for legalization, an alien must be "admissible to the United States as an immigrant." 8 U.S.C.A. § 1255a(a)(4)(A). A determination of whether an alien is admissible requires consideration of the various grounds for exclusion. For example, if an alien is mentally retarded, insane, psychologically or sexually deviant, afflicted with a contageous disease, a vagrant, a

predicated upon 8 U.S.C.A. § 1182(a)(19) (West Supp. 1988), which provides that an alien may be excluded from admission to the United States if the alien, "by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this chapter." Thus, even if an alien had lawfully obtained a non-immigrant visa, the fraudulent use of that visa to gain entry into the United States would render the alien excludable under § 1182(a)(19) and require that an application for a waiver of excludability be filed along with the legalization application. *See* 8 U.S.C.A. § 1255a(d)(2)(B). (West Supp. 1988) (making excludability under § 1182(a)(19) waivable "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest").[2]

Following the change in policy by the INS, plaintiffs sought to amend their complaint. On April 4, 1988, plaintiffs lodged with the Court a proposed First Amended Complaint. At an informal hearing on the matter, the Court identified *sua sponte* a number of jurisdictional and related problems, including the standing of some of the plaintiffs to assert the various claims made and the fact

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polygamist, a prostitute, has been convicted of a crime involving moral turpitude or a felony, has engaged in any immoral act, is a national security risk, or was associated with the Nazi government in Germany, he may be excluded. *See* 8 U.S.C.A. § 1182(a) (West 1970 & Supp. 1988). The majority of these grounds for exclusion will automatically preclude legalization, while a minority may be waived by the attorney general, thereby permitting legalization. *See* 8 U.S.C.A. § 1255a(d).

[2] An alien seeking admission to the United States, who holds himself out as a nonimmigrant when in fact he is returning to an illegal residence in the United States, would have fraudulently procured entry into the United States.

that the allegations of several of the individual plaintiffs failed to bring them within the two proposed subclasses. Rather than deny the motion for leave to amend, the Court suggested that plaintiffs consider the concerns raised and modify their complaint accordingly.

On June 1, 1988, this Court granted plaintiffs' motion to amend their complaint. By their First Amended Complaint, plaintiffs, now six organizations and five individuals, essentially raise two issues. First, they continue to assert their claim that 8 C.F.R. § 245a.2(b)(8), prior to its modification, was inconsistent with IRCA. They therefore seek a declaration that the original policy was arbitrary and capricious, an order of this Court extending the application period to November 30, 1988, and a court-ordered publicity campaign to be conducted by the INS to inform members of the first subclass of the modified policies and the extended application period.

The second issue raised is a challenge to the modified policy, as set forth in 8 C.F.R. §§ 245a.2(b)(9) and (b)(10), insofar as the INS requires a waiver application to be filed by those individuals who "legitimately obtained a non-immigrant visa in good faith prior to January 1, 1982, but who later used the same visa to reenter the United States when returning from a brief departure. . . ."[3] As relief, plaintiffs seek a declaration vindicating their position, a writ of mandamus compelling the INS to comply with the terms of IRCA, an order requiring the INS to refund the $35 application fee, and an order directing the INS to destroy all waiver applications acquired as a product of the modified policy.

At a hearing conducted on July 11, 1988, this Court ordered that the case be certified as a class action. Two distinct subclasses were identified. The first subclass was

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[3] First Amended Complaint ¶ 35.

defined to include all persons who qualify for legalization but who were deemed ineligible for legalization under the original policy, who learned of their ineligibility following promulgation of the policy and who, relying upon informatino that they were ineligible, did not apply for legalization before the May 4, 1988 deadline. The second subclass comprises all persons who qualify for legalization and who entered the United States with non-immigrant visas not acquired through fraud or misrepresentation, who subsequently briefly departed the United States and then returned by improperly using their non-immigrant visas, and who are therefore required to apply for waivers of excludability and to pay a $35 application fee.

The parties agree that no facts remain to be determined regarding the propriety of the original and modified policies, although factual questions may still remain concerning the availability of the relief requested. This was acknowledged at oral argument. Resolution of the legal issues before this Court will therefore resolve whether the claims of the two subclasses have any merit.

DISCUSSION

I. Standard of Review

At the outset, it is critically important to understand the scope of this Court's inquiry. As determined by the Supreme Court, when called upon to review an agency's construction of a statute which the agency must administer, a court must first ascertain whether Congress has directly addressed the precise question presented. If the intent of Congress is readily discernible, the inquiry is ended, since both the court and the agency must effectuate the "unambiguously expressed intent of Congress." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (footnote

omitted). However, if the court "determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843 (footnote omitted). Significantly, the Court also added that a reviewing court "need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.* at 843 n.11. *See also Chemical Manufacturers Ass'n v. Natural Resources Defense Council, Inc.*, 470 U.S. 116, 125-26 (1985) (requiring clear, unambiguous intent of Congress contrary to agency interpretation to overturn that interpretation).

II. Original Policy

Plaintiffs' first claim for relief presents the singular question of whether the INS' regulation implementing the "continuous[ ] . . . unlawful status" requirement of § 1255a(a)(2) is reasonable. This is because Congress explicitly delegated the task of interpretation to the INS. *See* 8 U.S.C.A. § 1255a(g)(1). As a result, the regulation promulgated by the INS must be accorded "considerable weight." *Chevron,* 467 U.S. at 844.

A. Reasonableness of Original Policy

1. Plain Meaning of the Statutory Scheme—The focal point of this lawsuit centers on aliens who entered the United States and acquired illegal status prior to January 1, 1982. Generally, this entry would have occurred either

by an alien's remaining in this country beyond the authorized period, failing to maintain nonimmigrant status, or committing certain enumerated crimes. The important point, however, is that the aliens in the first subclass were no longer legally in the United States as of January 1, 1982 and therefore satisfy the threshold time limitation of § 1255a(a)(2).

Clearly, as both sides acknowledge, IRCA expressly permits an alien to leave the United States for brief periods of time. *See* 8 U.S.C.A. § 1255a(g)(2)(A).[4] According to the original INS policy, however, an alien would lose his continuous unlawful residency status if his entry were documented on INS Service Form I-94. *See* 8 C.F.R. § 245a.2(b)(8) (1988).[5] Consequently, any alien who could only gain entry into the United States by presenting documentation—as contrasted with simply crossing a desolate portion of the U.S. border and therefore avoiding inspection altogether—effectively lost the privilege of brief departure granted by Congress in § 1255a(g)(2)(A). It is

[4] It should be recalled that the INS regulations implementing this provision establish that an alien will be deemed to have maintained continuous uniawful residence in the United States so long as no single absence from the United States exceeded 45 days and the total period of absence did not exceed 180 days. *See* 8 C.F.R. § 245a.1(c)(1)(i) (1988).

[5] Entry into the United States actually involves a two step procedure. First, in a typical situation, an alien would acquire a nonimmigrant visa at a United States consulate in his country. One such visa—a B-2 visitor's visa—would, for example, permit the alien to remain in the United States for a minimum six month period. *See* 8 C.F.R. § 214.2(b)(2) (1988). Having procured a visa, the alien would travel to the United States and present himself for inspection at the U.S. border or a port of entry. The alien would then be issued an INS Form I-94 documenting his entry in the United States, his nonimmigrant status, and the period of time he is authorized to stay in the United States. *See* 8 C.F.R. § 235.1(f) (1988).

for this reason that plaintiffs contend that the INS' original policy, as manifested in 8 C.F.R. § 245a.2(b)(8), is inconsistent with the obvious intention of Congress, for Congress plainly knew that reentry into the United States could only be accomplished either by avoiding inspection or by improperly using a non-immigrant visa when presenting oneself for inspection.

Defendants argue that their initial regulation was reasonable because they sought to "adopt a bright line test" to use in effectuating the "unlawful status" requirement. According to defendants, there are only two ways in which an alien presenting himself for inspection can enter the United States. The alien may either use a then unexpired Form I-94 or obtain a second non-immigrant visa because his initial visa had expired. In both cases, however, defendants assert that since the alien holds facially valid entry documentation, the sole basis for the alien's excludability and hence illegal status was that individual's fraudulent intent to remain in the United States beyond the limited duration of the documentation. Consequently, fearing "rampant fraud and abuse" concerning the existence or nonexistence of that fraudulent intent at the time of reentry, the INS promulgated a regulation which would obviate any need to inquire into the difficult issue of an alien's subjective intent. Defendants therefore argue that their original position was reasonable and should be upheld.[6]

Although superficially plausible, defendants' argument cannot withstand analytical scrutiny for a number of

[6] The INS could not, of course, take the position that an alien who reentered the United States fraudulently was here lawfully. The use of false documentation to procure entry constitutes one basis for excluding and/or deporting the individual. *See* 8 U.S.C.A. § 1182(a)(19).

reasons and despite the considerable deference it must be accorded. First, the underlying premise of this argument is inconsistent with Congress' express intent to permit illegal aliens to leave the United States for brief periods of time. Given this intent, and in view of the fact that the *only* way an alien who seeks to gain entry into this country by border inspection can succeed is to present documentation acquired and/or used with fraudulent intent, Congress could not have intended that the facial validity of the documentation could break the continuity of an alien's illegal residence.[7] The INS would thus not even be forced to ascertain the alien's intent at the time of reentry.

A second reason for rejecting the INS' position is that even if the INS were forced to undertake the admittedly difficult task of determining an alien's intent, Congress' willingness to permit brief departures from the United States without distinguishing how reentry was achieved is indicative of Congress' decision to have the INS perform that task. The difficulty attendant with implementing a statutory scheme is not an excuse for limiting one provision of that scheme.

Third, in the context of these other indicia of the unreasonableness of the initial regulation, the many other examples where the INS is asked to evaluate subjective intent also become significant. In IRCA, for example, immigration officials are called upon to determine whether an alien fraudulently procured a visa or entry into the United States. *See* 8 U.S.C.A. § 1182(a)(19). Immigration officials must also evaluate the claim of an alien seeking asylum in this country that he has a well-founded fear of persecution. *See* 8 U.S.C.A. §§ 1101(a)(42), 1158 (a), 1253(h) (West Supp. 1988).

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[7] In fact, the procurement or use of documentation would normally justify exclusion because of the concomitant fraudulent intent. *See* footnote 6, *supra*.

Despite the foregoing considerations, defendants argue that the statutory scheme does indeed support the reasonableness of their original policy. Specifically, they point to 8 U.S.C.A. § 1255a(a)(2)(B), applicable to aliens using non-immigrant visas, which provides that such an alien "must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date." From this provision, they contend that since the illegal status of an alien using a non-immigrant visa must become known to the Government before January 1, 1982 in order to establish the requisite continuity, the intent of an alien reentering this country after January 1, 1982 with a non-immigrant visa to remain permanently must similarly be known to the Government before the period of stay authorized by that later visa can be considered unlawful under § 1255a(a)(2)(A).

Fundamentally, this argument again reflects the erroneous premise that the sole illegality of an alien's presence following reentry, where the non-immigrant visa facially permits his presence, is that alien's fraudulent intent to ignore the limited duration of the visa and remain permanently. The statutory scheme crafted by Congress simply is not so limited. Once an alien acquires illegal status pursuant to the terms of § 1255a(a)(2)(B), then that status is not relinquished so long as the 45 day and 180 day limitations are satisfied. How the alien reentered the United States and what his intentions were at that time are not dispositive factors in the continuous unlawful calculus. The brief departure concession of § 1255a(g)(2)(A) cannot be read any other way.

Further undermining defendants' argument is the plain fact that it misreads § 1255a(a)(2)(B). That section states that aliens who used non-immigrant visas when entering

the United States may establish their illegal status either (1) by demonstrating that the stay authorized by the non-immigrant visa expired before January 1, 1982 "*or*" (2) by showing that their unlawful status – which may be acquired in ways other than overstaying the period of the visa – was known to the Government prior to January 1, 1982. *See* 8 U.S.C.A. § 1255a(a)(2)(B). Defendants' argument ignores the first alternative.

It is this Court's conclusion that the original regulation promulgated by the INS conflicts with the plain meaning of the statutory scheme. When it enacted § 1255a(g)(2)(A), Congress clearly intended that brief departures abroad would not break an established period of illegal residence in the United States. Section 1255a(g)(2)(A) makes no distinction between reentry by inspection and other forms of illegal reentry. Even the regulations established pursuant to the congressional mandate of § 1255a(g)(2)(A) fail to make such a distinction. *See* 8 C.F.R. § 245a.1(c)(1). Thus, what the INS' original policy did was to read one portion of the statute in a way that deprived another portion of its full intended effect. It is simply incorrect to interpret one provision of a statute in a way that essentially saps another provision of its vitality. *American Tobacco Co. v. Patterson,* 456 U.S. 63, 71 (1982) ("Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible."); *Richards v. United States,* 369 U.S. 1, 11 (1962) ("We believe it fundamental that a section of a statute should not be read in isolation from the context of the who Act, and that in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law and to its object and policy.' ") (footnotes omitted); *Adams v. Howerton,* 673 F.2d 1036, 1040 (9th Cir.) ("[W]e strive to interpret language in one section

of a statute consistently with the language of other sections and with the purposes of the entire statute considered as a whole."), *cert. denied,* 458 U.S. 1111 (1982).

2. Legislative History of IRCA – When the plain meaning of a statutory scheme appears to settle the question presented, the Supreme Court has directed that the legislative history should be consulted to "determine only whether there is 'clearly expressed legislative intention' contrary to that language, which would require [a court] to question the strong presumption that Congress expresses its intent through the language it chooses." *INS v. Cardoza-Fonseca,* 480 U.S. __, 107 S.Ct. 1207, 1213 n.12 (1987) (quoting *United States v. James,* 478 U.S. 597, 106 S.Ct. 3116, 3125 (1986)). An examination of the legislative history reveals no indication of a congressional desire to distinguish between aliens reentering this country by inspection and those seeking to avoid inspection.

The reports of the various congressional committees analyzing IRCA indicate that the legalization provisions, including the brief departure exception, were designed to apply to all aliens. They do not in any way suggest a distinction between aliens who present documentation and those who do not. *See, e.g.,* H.R. Rep. No. 682(I), 99th Cong., 2d Sess. 49, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5649, 5653 ("The Committee believes that the solution lies in legalizing the statuts [sic] *of aliens* who have been present in the United States for several years. . . .") (emphasis added). *See also id.* at 114, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5676, 5718. Moreover, President Reagan, when he signed IRCA into law, noted that "[d]istance has not discouraged illegal immigration to the United States from all around the globe. The problem of illegal immigration should not, therefore, be seen as a problem between the United States and its neighbors." Statement by President Ronald Reagan Upon Sign-

ing S.1200, 22 Weekly Comp. of Presidential Documents 1534 (November 10, 1986), *reprinted in* 1986 U.S. Code Cong. & Admin. News 5856-1, 5856-4. Defendants have therefore failed to satisfy their burden of demonstrating a clearly established legislative intent contrary to the plain meaning of the statutory scheme.

B. Conclusion

The plain meaning of the statutory scheme and the legislative history demonstrate that the INS' initial policy, as manifested in 8 C.F.R. § 245a.2(b)(8), was inconsistent with Congress' intent when it enacted IRCA. Thus, although entitled to considerable deference, "there are limits, grounds in the language, purpose and history of the particular statute, on how far an agency properly may go in its interpretative role." *Int'l Bhd. of Teamsters v. Daniel,* 439 U.S. 551, 566 (1979). Moreover, the subsequent modification of § 245a.2(b)(8), although certainly not dispositive, is further indication that that policy may be questioned. *Cardoza-Fonseca,* 107 S.Ct. at 1221 n.30. Accordingly, it is the declaration of this Court that 8 C.F.R. § 245a.2(b)(8), until modified, was inconsistent with the provisions and policies of the Immigration Reform and Control Act of 1986.

C. Available Relief

The question of what relief is available to the plaintiffs who fall within subclass one is an exceedingly complex question. The Court has identified a number of issues which the parties have failed to address but which the Court deems determinative. As a result, the Court reserves judgment as to the relief requested by these plaintiffs and any factual questions attendant thereto pending further

briefing by the parties. The Court will frame the issues for the parties in a minute order to be issued along with this Order.

III. Modified Policy

As all parties acknowledge, an alien seeking an adjustment of status must be "admissible to the United States as an immigrant." 8 U.S.C.A. § 1255a(a)(4)(A). In order to qualify as admissible, an alien must not fall within one of the many categories Congress has determined justify exclusion. *See* 8 U.S.C.A. § 1182(a). One such category potentially forecloses legalization to those aliens who fraudulently procured a visa or entry into the United States. *See* 8 U.S.C.A. § 1182(a)(19). The Attorney General is, however, authorized by Congress to waive this basis for exclusion "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 U.S.C.A. § 1255a(d)(2)(B)(i).[8]

Under defendants' modified policy, an alien who reentered the United States using a non-immigrant visa is excludable under § 1182(a)(19) because, by holding himself out as a nonimmigrant when in reality he was returning to an illegal residence in the United States, the alien would have fraudulently procured entry into the United States. Although the INS deems the alien to be excludable and thus potentially ineligible for an adjustment of status, the INS may waive this basis for exclusion. As a result, the INS, consistent with all other waivable grounds for excludability, requires those aliens to file an application for a waiver of excludability along with a $35 filing fee. *See*

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[8] Many of the other grounds for exclusion may not be waived. *See* 8 U.S.C.A. § 1255a(d)(2)(B)(ii).

8 C.F.R. §§ 245a.2(b)(9) and (b)(10).[9] Plaintiffs contend that this requirement is inconsistent with IRCA and that it violates the equal protection guarantee of the Fifth Amendment.

A. Reasonableness of Modified Policy

1. Plain Meaning of the Statutory Scheme—As it is currently formulated, § 1182(a)(19) provides that "the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States . . . (19) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this chapter." Thus, an alien will be excludable if, by fraud or willfully misrepresenting a material fact, he seeks, sought, or has procured any of four items: a visa, other documentation, entry into the United States, or any other benefit provided by the Act. Directly relevant to subclass two in this case is that portion of § 1182(a)(19) which renders excludable an alien who has procured entry into the United States by fraud. An alien reentering the United States under the ostensible authorization of a non-immigrant visa when in fact he is returning to his unlawful residence has fraudulently procured entry into the United States.

[9] According to 8 C.F.R. § 245a.2(b)(9), "[a]n alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence" may file for legalization. However, "[a]n alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) [§ 1182(a)(19)] as an alien who entered the United States by fraud." 8 C.F.R. § 245a.2(b)(10).

Faced with this relatively straightforward provision, plaintiffs in subclass two nevertheless argue that they are not excludable. They contend that § 1182(a)(19), as currently formulated, does not apply to them.

IRCA was passed on November 7, 1986. In its current form, however, § 1182(a)(19) was not passed until three days later, on November 10, 1986, as part of the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 8 U.S.C.A. § 1182(a)(19) (West Supp. 1988) hereinafter Marriage Fraud Amendments). It is therefore plaintiffs' position that IRCA contemplates application of the earlier version of § 1182(a)(19), and, according to that version, they are not excludable.[10] Plaintiffs therefore characterize the issue presented as whether the amendment of § 1182(a)(19) should be applied retroactively.

This Court has serious misgivings about the accuracy of plaintiffs' characterization. Restrictions on when a law may be applied retroactively are fundamentally predicated

[10] Prior to its amendment on Novenber 10, 1986, § 1182(a)(19) provided for exclusion for "[a]ny alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact." 8 U.S.C.A. § 1182(a)(19) (West 1970), *amended by*, 8 U.S.C.A. § 1182(a)(19) (West Supp. 1988). Significantly, the earlier version relates only to seeking to enter by fraud and not to entry in general. Thus, an alien who accomplished a fraudulent entry was only excludable at the time of entry and not upon completion of the entry. As one commentator noted, "[t]he Attorney General held that the first part of the 1952 Act, relating to fraud in documents, is both prospective and retrospective . . . but that the second portion, relating to misrepresentation in seeking entry, is prospective only." 1 C. Gordon, H. Rosenfield & S. Mailman, *Immigration Law and Procedure* § 2.37, at 2-267 (1988). Consequently, an alien who lawfully obtained a non-immigrant visa would have been excludable at the time he fraudulently reentered the United States; but, having accomplished the entry, the alien was no longer excludable under § 1182(a)(19).

upon notions of fairness to one who has a vested right or has acted in accordance with the law as it existed at the time of the action. *See NLRB v. St. Luke's Hospital Center,* 551 F.2d 476, 484 (2d Cir. 1976). In this case, both the passage of IRCA and the Marriage Fraud Amendments predated the commencement of the legalization application period by roughly six months. Moreover, it is not insignificant that only three days separated passage of the two Acts or that IRCA was signed by President Reagan on the same day that the Marriage Fraud Amendments passed in Congress. It might therefore be argued that since the two statutes were acted upon by the same congressional committees simultaneously and were passed contemporaneously, there is no question of retroactivity in this case.

Even assuming the question of retroactivity must be confronted, we are here concerned with *illegal* aliens and thus at no time did plaintiffs act in accordance with the law, only to see the law changed subsequently. Both before *and* after the passage of the amended version of § 1182(a)(19), plaintiffs were acting contrary to the laws of this Nation. This case does not involve suddenly making an action illegal that was, at the time of its commission, legal. Nor can it be said that a benefit, once conferred, is improperly being revoked, for the benefit at issue—amnesty—did not become available until May 5, 1987. *See generally Union Pacific R. Co. v. Laramie Stock Yards Co.,* 231 U.S. 190, 199 (1913) ("[A] retrospective operation will not be given to a statute which interferes with *antecedent rights* . . . unless such be the 'unequivocal and inflexible import of the terms, and the manifest intention of the legislature.' ") (citations omitted and emphasis added); *City of Great Falls v. U.S. Dept. of Labor,* 673 F.2d 1065, 1069 (9th Cir. 1982) ("[T]he issue is whether application of the new law would infringe upon or deprive a

person of a right that had *matured or become unconditional.*' ") (citations omitted and emphasis added).

Plaintiffs do not deny that Congress may provide that the amendment of § 1182(a)(19) be applied retroactively. *See Greene v. United States,* 376 U.S. 149, 160 (1964); *Menhorn v. Firestone Tire & Rubber Co.,* 738 F.2d 1496, 1504 (9th Cir. 1984). Instead, they assert that Congress expressly chose not to apply the amendment retroactively. The question of whether § 1182(a)(19) as amended should apply to this case is therefore one of statutory construction. *United States v. Kimberlin,* 776 F.2d 1344, 1347 (7th Cir. 1985), *cert. denied,* 476 U.S. 1142 (1986).

The relevant congressional statement appears at § 6(b) of the Marriage Fraud Amendments. That provision states that the amendment applies "to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act based on fraud or misrepresentations occurring before, on, or after such date." *See* Marriage Fraud Amendments, Pub. L. No. 99-639, § 6(b), 100 Stat. 3537, 3544 (1986). According to plaintiffs, legalization applicants are not seeking "admission" to the United States because admission relates to the entry of an alien, and "entry" is defined by statute as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession. . . ." 8 U.S.C.A. § 1101(a)(13).

Plaintiffs' argument completely ignores the statutory terms utilized by Congress when it enacted IRCA. Both the temporary and permanent residence provisions of IRCA provide that when certain conditions are met, "[t]he Attorney General shall adjust the status of an alien to that of an alien lawfully *admitted* for temporary residence. . . ." *See* 8 U.S.C. § 1255a(a) (emphasis added). *See also* 8 U.S.C.A. § 1255a(b). Adjustment of status is therefore equated with admission under the statutory scheme itself.

Cf. 2 C. Gordon, H. Rosenfield & S. Mailman, *Immigration Law and Procedure* § 7.7e, at 7-104 (1988). Moreover, as was previously noted, IRCA expressly requires that an alien must establish that he is "admissible to the United States as an immigrant" in order to obtain an adjustment of status. *See* 8 U.S.C.A. §§ 1255a(a)(4)(A), 1255a(b)(1)(C)(i). Finally, when it provided that § 1182(a)(19) was a waivable ground for exclusion, Congress phrased that provision in terms of "the determination of an alien's *admissibility*." 8 U.S.C.A. § 1255a(d)(2) (emphasis added). Thus, the statutory framework itself is strong evidence that Congress did not equate admission or admissibility merely with entry, for the basic requirement of IRCA was that an alien have entered the United States well before the question of admissibility would be determined. If Congress had meant "entry" when it said "admission," it surely could and would have said so.

It is also evident that plaintiffs' restrictive interpretation of the term "admission" as used in § 6(b) is inconsistent with the statutory framework of the Marriage Fraud Amendments. The primary purpose of that enactment was to create a two year conditional residence status for those aliens who were previously admitted for permanent residence. *See* 8 U.S.C.A. § 1186a (West Supp. 1988). That conditional status was intended to facilitate the identification of those marriages that were "improper" because they were merely ploys to assist the alien's illicit immigration into the United States. Consistent with this purpose, the amendment of § 1182(a)(19) permits this past fraud to be considered a basis for exclusion. The Marriage Fraud Amendments thus plainly contemplate that the alien had already entered the United States at least two years earlier. Consequently, plaintiffs are simply incorrect when they ascribe such a narrow meaning to the term "admission" as it is used in § 6(b).

2. Legislative History—The legislative history of the Marriage Fraud Amendments in no way contradicts this conclusion. For example, the House Judiciary Committee Report states that one function of the Amendments would be to "prevent[ ] aliens undergoing any administrative or judicial proceeding concerning their right to enter *or remain* in the United States from obtaining an immediate benefit on the basis of a marriage occurring during that period of time." H.R. Rep. No. 906, 99th Cong., 2d Sess. 7, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5978, 5979 (emphasis added). Similarly, in a letter to the chairman of the House Judiciary Committee, the Justice Department noted that the conditional status created by the amendments would apply to "aliens who marry *following* entry on a nonimmigrant fiance visa." Letter from John R. Bolton, Asst. Att'y Gen. to Rep. Peter W. Rodino, Jr., Chairman, House Comm. on the Judiciary (July 31, 1986), *reprinted in* 1986 U.S. Code Cong. & Admin. News 5978, 5980.

In view of the foregoing, the INS' modified policy requiring the filing of waiver applications is entirely consistent with congressional enactments.[11] It must be noted, however, that the INS need not even satisfy so stringent a test. All the INS must do is satisfy this Court that the challenged regulations are reasonable—*i.e.*, based upon a permissible construction of the statute—and thus not arbitary and capricious, irrespective of whether this Court

[11] This conclusion is not in any way inconsistent with the Court's ruling regarding the first subclass. When Congress expressly provided that brief absences would not break an alien's continuous residence, it was inconsistent with that policy to enact regulations which *completely* deny this benefit to a class of aliens obviously known to Congress. This does not mean, however, that the INS, *consistent with congressional policy* as manifested in § 1182(a)(19), may not impose a *condition* upon that benefit.

would have independently arrived at this particular interpretation of the statute. *Chevron*, 467 U.S. at 843 n.11. *See also Young v. Community Nutrition Institute*, 476 U.S. 974, 106 S.Ct. 2360, 2365 (1986); *Fernandez v. Brock*, 840 F.2d 622, 633-34 (9th Cir. 1988).

B. Equal Protection

Plaintiffs present an additional challenge to the INS' modified policy, asserting that it constitutes a violation of the equal protection guarantee of the Fifth Amendment. Specifically, they argue that because the modified policy requires that a waiver application be filed by all aliens whose reentry into the United States was documented on INS Form I-94, they are impermissibly treated differently than similarly situated Canadian and Mexican applicants for legalization. This distinction arises because the INS permits Canadian and Mexican citizens to enter the United States using only non-immigrant visas and without the necessity of obtaining I-94 documentation.

It is well-established in Fifth Amendment jurisprudence that aliens, even those whose presence here is illegal, are entitled to equal protection of the laws. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). However, it has also been consistently emphasized by the Supreme Court that " 'over no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909)). Thus, "the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments [is] largely immune from judicial control." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953). *See also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976). "[I]t is not the judicial role in cases of this sort to probe and test the justifications for the legislative decision." *Fiallo*, 430 U.S. at 799.

When the federal government establishes classifications among aliens pursuant to immigration laws, those classifications " 'need only be supported by some rational basis to fulfill equal protection guarantees.' " *United States v. Barajas-Guillen*, 632 F.2d 749, 752 (9th Cir. 1980) (citations omitted).[12] According to defendants, they do not seek to confer any special privileges upon certain aliens whose countries of origin are contiguous with the United States, since any alien from Mexico or Canada who could be shown to have fraudulently entered the United States would also be required to seek a waiver of excludability. Instead, aliens who entered the United States and who were issued I-94 documentation, unlike those who were not, are prima facie excludable at the time they apply for legalization.

In order to qualify for legalization, an alien must be returning to an unrelinquished unlawful residence in this country. However, this also means that the alien, by obtaining a Form I-94, fraudulently entered the United

[12] Without developing the argument, plaintiffs suggest that *Plyer v. Doe*, 457 U.S 202 (1982), stands for the proposition that a middle level of scrutiny, somewhere between strict scrutiny and the rational basis test, should apply in this case. Plaintiffs' reliance on *Plyer* is misplaced. The Court in *Plyer* repeatedly stressed the plenary authority of the federal government with respect to immigration and expressly contrasted this with the more limited authority of the states in this area. *See Plyer*, 457 U.S. at 225. Thus, at best, *Plyer* may be said to stand for the proposition that *state* distinctions among aliens are judged by some heightened degree of scrutiny. The vast federal power over immigration forecloses such an argument where, as here, we are concerned with federal law. *See id.*

States and is therefore excludable pursuant to § 1182(a)(19). By contrast, the INS cannot be certain at the outset whether those aliens who were not issued a Form I-94 fraudulently entered the United States and consequently do not require them automatically to submit waiver requests with their legalization applications.

This policy is completely rational and thus satisfies the requirements of the Fifth Amendment. *See Fiallo,* 430 U.S. at 797-99 (upholding federal law granting immigration preferences to legitimate children); *Alvarez v. District Director of U.S.I.N.S.,* 539 F.2d 1220, 1224 (9th Cir. 1976) (upholding special immigration privileges for Canadian and Mexican aliens), *cert. denied,* 430 U.S. 918 (1977).

C. Conclusion

In view of the foregoing analysis, plaintiffs' challenge to the modified policy adopted by the INS and codified at 8 C.F.R. §§ 245a.1(b)(9) and (b)(10) is without merit. Accordingly, summary judgment on this issue shall be entered in favor of defendants.

IT IS SO ORDERED.

DATED: July 15, 1988.

/s/ William D. Keller
WILLIAM D. KELLER
United States District Judge

Supreme Court of the United States

No. 91-1826

WILLIAM P. BARR,
ATTORNEY GENERAL, ET AL., PETITIONERS

v.

CATHOLIC SOCIAL SERVICES, INC., ET AL.

ORDER ALLOWING CERTIORARI.
Filed June 22, 1992.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

June 22, 1992